

# Declared Guilty, a Never-ending Story:

An analysis of the impact of the criminal justice system upon the self

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This thesis is presented for the degree of Doctor of Philosophy of Murdoch  
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I declare that this thesis is my own account of my research and contains as its main content work which has not previously been submitted for a degree at any tertiary education institution

Signed .....

Brian Steels

## Abstract

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This study explores the experience of people who have been publicly declared guilty. It retells the narratives of offenders from the point of arrest through to conviction and, where relevant, imprisonment and release. The experiences of close relatives are also explored and provide an important part of the thesis. These accounts are set against the institutional context of the criminal justice system and a systemic account of police, courts, prisons and community corrections is provided. The main aim of the study is to investigate and document the impact of the criminal justice process on offenders' sense of 'self'.

At a theoretical level, the study is informed by symbolic interactionism, particularly the work of Erving Goffman. This enables the development of insights into issues such as loss, shame, humiliation and loss of self. The asymmetrical power relationship in which these feelings are engendered and maintained is emphasised. At the same time, the study records the level and types of resistance among the subjects of the criminal justice system.

The findings are significant for our sociological understandings of the impact of being declared guilty, for they suggest that the criminal justice process *per se* contributes to a severely damaged self, and that the subjective experience of 'being found guilty' starts at the moment of arrest and persists well after sentencing as subjects try to re-integrate into the community with a record of conviction.

The study also suggests that these processes are not passively absorbed by subjects. As well as describing feelings of shame and loss, those participating in the research talked about the unfairness of the system, their preparedness to resist in numerous ways, and of their longing for an older, better life in which their sense of self was undamaged.

The study concludes by arguing that profound change to the culture of the criminal justice system is needed if rehabilitation is to be successful. In this context it emphasises the importance of accountable and transparent human services concerned with the human and civil rights of offenders, court diversion schemes, alternatives to custody, and the practical application of restorative and therapeutic justice.

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# Chapter 1

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## Introduction and context of research thesis

*One door opens  
as another closes  
on the journey  
from free choice  
to no choice  
then out again  
to very little choice.*

*The path from home  
to court,  
to jail,  
to home again  
and into isolation.*

*Viewed  
by the eyes  
of others,  
peering  
into the heart  
of the punished.  
Bs95*

This thesis explores how it feels to be publicly declared guilty and provides an analysis of the impact of the criminal justice system upon the self. It is told through the experiences of eighteen participants and, to a lesser degree, fourteen of their family members. The study really belongs to these participants, those best able to reflect on such an impact upon their selves. They made this study possible by allowing me to enter their lives and through the recounting of their personal stories. The study took place within the metropolitan area of Perth, Western Australia.

The original intention was to examine the social impact of an alternative sentencing option on offenders as I had been conducting research into a community group

conferencing model of restorative and transformative justice. However, as there were not enough adults who had experienced restorative justice processes it was decided to focus on the experiences of accused people entering the criminal justice system through traditional court processes. Within this context, my interest in restorative justice was retained in the sense that attention was still directed to the subjective implications of criminal justice proceedings and, more particularly, their impact on the self as perceived by the participants in this study.

Most of the literature dealing with the counterproductive aspects of the criminal justice system focuses on imprisonment and other forms of formal punishment (Bowen and Consedine 1999; Carlen 2002, Coyle, 1994; Garland 2002; Goulding, 2002; Pratt 2000; Stern, 1999). This study aims to expand that body of knowledge by suggesting that in order to fully understand the impact of the criminal justice system we must consider the processes in their entirety. That is, from the moment when a person becomes a 'person of interest' to the police, through arrest, interrogation, being charged, convicted, sentenced, through to release and beyond. It is only thus, I contend, that we can grasp the totality of punitiveness and its enduring impact on an offender's sense of self. The importance of this was underlined in the interviews where it became apparent that a sense of being found guilty occurred well prior to the formal court sentencing, occurring in most cases at the point of arrest and continuing well beyond release.



**Introducing myself**

My own history is a crucial part of this study and following is a brief outline in introduction. In August 1992 I was sentenced in the Supreme Court of Western Australia, to a seven and a half year prison sentence. My trial occurred twelve months after my arrest and first court appearance, during which time the experience of an immediate loss of income was felt. Being treated as though guilty by colleagues and officials and having to cope with the collapse of a relationship stressed my situation immensely. I was initially sent to Casuarina Maximum Security Prison and six months later transferred to Canning Vale Prison (now renamed Hakea). Finally, after eighteen months I was sent to Karnet Prison Farm from where my release to a work-release programme in November 1994 occurred. During this entire period of incarceration not one person asked if I required help, nor was any treatment programme provided. The experience of having to explain to everyone from bank staff to insurance and health professionals about my conviction and period away from home was frequent and traumatic, and although my own home was available to return to, I spent the first month living with my eldest daughter.

Since my release in 1994 several close friends have died in custody. My release from custody also enabled me to be actively involved in restorative justice practices and penal reform. Within weeks of being released from prison I was back inside – this time providing pre-release courses, a prisoner advocacy service and visiting prisoners as an ‘Unofficial’ Official Prison Visitor, appointed by the Governor General of WA under the Prison Act. ‘Unofficial’ Official Visitors, under this act, were people such as advocates and lawyers, able to raise prisoners’ concerns directly with the Director General or the

Minister for Justice and his or her staff. ‘Unofficial’ Official Visitors differed in their role from that of an Official Visitor, who was selected from the community. The Official Visitors at this time were required to enter the prison to provide prisoners the opportunity to raise concerns about their treatment, and report back such concerns to the prison superintendent.

Being involved as a justice activist provided me with an opportunity to assist small, community-based groups to raise particular concerns of penal reform issues and become involved with these groups when they protested against an officially imposed 24 hour prison lock-down, many instances of prisoner abuse and the outsourcing of prison and court services. This led, three years ago to my being a part of a team in which we helped develop and research a community group conference model of restorative and transformative justice in the Magistrate’s Courts, in Perth and Fremantle.

My relationship among past and present prisoners and my continuing community involvement with social justice groups provided me with a helpful background from which to engage with this study. Within these relationships, attendance at court, the provision of support and information and report writing on the personal struggles and progress of people who have been subjected to the criminal justice system were common. These relationships placed me in a good position to observe the ineffectiveness of current practices towards contemporary crime patterns and the damaging nature of imprisonment upon a growing prisoner population. They have also enabled me to observe socially excluded people unable to walk away from the personal crises they encounter in their

everyday lives. And, such is the nature of contemporary justice that it could be suggested that it continues to fail to provide the support systems and social changes necessary to break the cycle of personal damage and re-offending, despite its focus on personal responsibility and community safety. I hope that the research conducted here provides a significant contribution in challenging this.

### **Context of this research**

Whilst it is the relational aspect between the individual and criminal justice system that captures my attention, the socio-political context remains crucial. Currently the political climate appears to favour individual responsibility and strict state control. In Western Australia this is evidenced by such things as mandatory sentencing, notification rules and disclosure legislation. Two specific examples serve to illustrate this, both of which are accompanied by a ‘tough on crime’ approach whereby zero-tolerance policing is advocated and places known to the police as likely hot-spots of crime and anti-social behaviour are frequently targeted.

The first relates to a curfew imposed in the locality of Northbridge. As reported in Hansard (Legislative Assembly of Western Australia Hansard 15<sup>th</sup> April 2003) the Premier of Western Australia, Dr Geoff Gallop, spoke of ‘developing a formal policy framework for a curfew to apply to unaccompanied juveniles in Northbridge’ and of using ‘existing powers under section 138B of the Child Welfare Act to remove from the streets unaccompanied children’. The results of this policy are applauded in the Office of Crime Prevention’s Report *Young People in Northbridge: One Year On* (2004). Against

this, the Perth Youth Advisory Council's President, Kara Lombard, described the curfew as 'discriminatory, redundant, and ambiguous' acting as a 'a short-term solution without addressing the underlying problem of displaced youth' (Metior<sup>1</sup> edition 1. 2004).

The second example relates to the introduction of mandatory sentencing legislation in Western Australia under the Criminal Code Amendment Act (No 2)1996. In effect, this means that an adult offender will face a minimum sentence of 12 months imprisonment for third and consecutive burglaries, including those committed as a juvenile. This legislation has been criticized by the Human Rights and Equal Opportunity Commission for failing to take account of mitigating circumstances, including length of time between burglaries ([www.hreoc.gov.au/social\\_justice/sjreport\\_01/chapter4.html#wes](http://www.hreoc.gov.au/social_justice/sjreport_01/chapter4.html#wes)).

O'Malley and Garland both suggest that the current climate is characterised by a mix of 'neo-conservative' and 'neo-liberal' elements. On the neo-conservative side there is an emphasis on moral order with the state acting with strong authority and control, especially through law and order (O'Malley 1999:15). Even as it distances itself from certain tasks such as treatment programmes, prisoner transport and in some instances prisons themselves, the state still maintains ultimate power through legislative control and contracts. As Garland (2001:100) suggests, the advance of neo-conservatism with its call for law and order has led to 'a much more focussed, much more specific demand, targeted on particular groups and particular behaviours', where 'a renewed discipline and a tightening of controls....were directed mainly at poor individuals and marginalised communities and did nothing to constrain the great majority of citizens'.

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<sup>1</sup> Metior is the Student Guild's newsletter at Murdoch University (<http://metior.murdoch.edu.au/>)

The same point is made by Findlay et al, who suggest that the people most likely to be singled out for punishment are those people who are ‘distant from the centres of power in our society which inspire, direct and administer criminal justice’ (1994:261). They go on to comment that:

The sad reality is that discrimination does exist in our criminal justice system. A broad explanation for this may be found in the power imbalance between various groups in our society. Powerful groups protect their own interests by using the law as a tool of control over other groups (ibid).

In contrast to the quasi-paternalism of neo-conservatism, neo-liberalism stresses personal choice and individual responsibility, situating the offender as a person who has made a deliberate choice and who should bear the costs of that choice through a fitting punishment. In its emphasis on personal choice, neo-liberalism retreats from welfarism’s earlier emphasis on the social determinants of crime, supporting neo-conservatism’s ‘tough on crime’ approach. In his critique, Garland points out that the consequence of this has ‘been a fateful one in emotional as well as economic terms. Every individual is more and more obliged to adopt the economic attitude of the responsibilized, competitive entrepreneur’ (2001:157). He further contends that this leads to a stress on ‘control, closure, confinement, and condemnation’ since the ‘continued enjoyment of market-based personal freedoms has come to depend upon the close control of excluded groups who can not be trusted to enjoy these freedoms’ (Garland 2001:198). It is within this context that he argues that the poor are the ones who pay for the freedom of others for:

The pursuit of freedom...brings with it the risk of insecurity and the temptation to respond with repression. In this cultural setting, it is no wonder that the undeserving poor are feared and resented. Choosing freedom comes at a cost,

and all too often it is the poor and the powerless who are made to pay (Garland 2001:157)

Garland's (2003:203) observation that 'there is every sign that the shift towards punitive justice and a security build-up is continuing unabated' is reflected throughout Western Australia, where, as will be discussed in Chapter Two, an increasing number of people are being imprisoned. In October 2004, the Minister for Police and Justice stated that:

since the beginning of this year alone, there has been a 12 per cent increase in the prison population and the situation is likely to multiply even further over the next 12 months. (Media Release, Michelle Roberts, MLA, Minister for Police and Emergency Service, Justice and Community Safety. 29<sup>th</sup> October 2004).

The current popularity of prison as the solution to crime can be related to the fact that 'penal solutions are immediate, easy to implement, and....they have few political opponents' (Garland 2001:200). In Western Australia, as in other jurisdictions, these high rates of imprisonment include a disproportionate number of people who are unemployed, under-educated, have a mental illness or disability, and those who have previously suffered trauma and abuse. The 2002 report by the Department of Justice *Profile of Female Offenders* indicated that 96 per cent of women prisoners have experienced mental illness, physical or sexual abuse or substance abuse (cited in Annual Report 2002-3:76). In this context, Stern (1998:121) suggests that prisons then are in the main 'occupied by the casualties of social policies: those, and the children of those, who have not managed to get for themselves a position with income, employment, family security and social acceptance'. The damaging impact of prison is difficult to repair, and the net widening of community corrections orders with their 'default position' set at imprisonment ensures that high occupancy rates occur in each prison.

## **Aims and direction of thesis**

Against this background, this study aims to explore how contemporary practices are experienced by offenders and their close relatives. As previously indicated, my particular emphasis is on the extent to which the processes of the criminal justice system affect offenders' sense of themselves as accepted and acceptable citizens, able to re-integrate into mainstream community and make a valued contribution to it. The theoretical basis for the study was drawn from symbolic interactionism, specifically Erving Goffman's texts *Stigma*, *Asylums* and *The Presentation of Self in Everyday Life*. These provided insights into factors such as stigma, shame and exclusion and provided the methodological basis for the qualitative methodology employed in the thesis. Michel Foucault's text *Discipline and Punish*, an analysis of power and surveillance, was also used to illustrate the ways whereby the participants in this study were subjected to the official gaze both within and without prison.

The fieldwork for the research was conducted between July 2002 and March 2004 and involved in-depth interviews with eighteen offenders (the 'participants') and fourteen of their close relatives. Prospective participants were contacted through various networks including the Prisoners Advisory Support Service, the Prison Reform Group of WA and the Institute of Restorative Justice and Penal Reform. A snowballing technique was used to expand the number of participants. All of the primary participants had been charged with an offence and had recent experience of the criminal justice system. Ten of these had been in prison.

Throughout the thesis the participants' accounts have been placed within a context of the current structure and practices of the West Australian criminal justice system, with their voices providing a personal insight into the impact of the system upon the self.

## **Chapter Outline**

The first part of the thesis, Chapters Two, Three and Four, establishes the policy, theoretical and methodological foundations for the research. In the next part, Chapters Five, Six and Seven, a detailed account of the participants' experiences from arrest to completion of sentence is provided. Chapter Eight provides an interpretation of the accounts set against the background of power and resistance and Chapter Nine makes a number of suggestions for change. Details of each of these chapters are provided below.

Chapter Two deals with the police service, criminal courts, prisons and prisoner transport. Their historical background and current administration is examined to provide an overview of prisoner and community-based offender statistics, and make observations on the court custody centres and levels of prisoner rights and advocacy.

Chapter Three provides the theoretical background to the study. It is here that the ways in which the self interprets and gives meaning to its social environment is explored. Further, there is an examination of stigma associated with arrest and interrogation, court proceedings, sentencing, punishment, and the determination of guilt. This chapter also draws on Goffman's (1968) seminal work on the total institution and Foucault's (1979) analysis of the panopticon in a discussion of surveillance, power and control.



Chapter Four describes the methodology used in the study, explains the reasons for using a qualitative methodology and details how the interviews were carried out among the eighteen participants and the fourteen family members in the study. The chapter also highlights the particular ethical considerations associated with carrying out a study among people who are marginalised through their connection with the criminal justice system.

Chapter Five is devoted to the participants' accounts of their experiences of the criminal justice system. It follows their personal stories from arrest, through the court, and for some, prison. It also describes their re-entry into the community. The themes highlighted in this chapter include participants' experiences of being declared guilty early on in their encounter with the system and continuing this relationship beyond any legal connection to it. Further themes included participants' personification of the criminal justice system and the expectation that the system would be fair and just.

Chapter Six turns to the fourteen family members who participated in the study. These stories compliment and provide a family context to the stories of the primary participants.

Chapter Seven returns to the primary participants and details the personal, social and material consequences experienced as a result of engagement with the criminal justice system. It explores the difficulties encountered through loss of employment and safe housing and takes note of the significant eroding of social and intimate relationships.

Chapter Eight provides an overall discussion on the impact of the criminal justice system upon offenders' sense of self by combining the participants' accounts with the theoretical material discussed in Chapter Three. In particular this chapter focuses on issues of subjugation and resistance.

Chapter Nine, in conclusion, looks to future directions in policy and practice. It argues that significant procedural and policy changes are required at the level of arrest, in the courts and in rehabilitating prisoners.

## Chapter 2

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### The criminal justice system in Western Australia

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This chapter reviews the central components of the criminal justice system in Western Australia, concentrating on the police service, criminal courts, prisons and prisoner transport. It is a lengthy chapter, containing a significant amount of statistics and administrative detail, as well as historical description of the penal system. Given the focus of this research, various other services that impact on offenders and victims, including services to victims, families of offenders and community based services and their programmes are not considered here. Before commencing the discussion *per se*, the chapter reviews the philosophy and purposes of punishment as they are the foundation of many of the bureaucratic processes contained within the criminal justice system.

Punishment is defined in the *Oxford English Dictionary* (1985:836) as (in part) ‘penalty inflicted on offender; severe treatment by opponent’. Within the specific context of the criminal justice system, the *Oxford Handbook of Criminology 2000* describes punishment as ‘punishment for crime, imposed by the judiciary in accordance with penal law, and administered by penal institutions such as prisons and the probation service’. In relation to punishment, the modern state gradually achieved a ‘monopoly of force’ over its citizens through an evolutionary process of bureaucratisation where the state maintains the prerogative to punish or pardon (Findlay et al 1994:185). Hence it ‘wields the apparatus of social control’ through police, control over criminal prosecutions, custody, criminal justice policy legislation and regulations and ‘ultimately the armed forces’ (Hostettler 1994:192).

The precursors to current western systems of state-sanctioned punishment can be traced to Anglo-Saxon communal courts, places where, according to Hostettler (1994:10), ‘respectable representatives of the community at large’ gathered to witness the accused suffer a public ‘trial by ordeal’<sup>2</sup>. During this period, mutual responsibility was used as a principle of law enforcement (Hibbert 2003, Hostettler 1994) with ten men grouped together in tithings, each ‘responsible for each other’s good behaviour’ Hibbert (2003: 12). William I established the Royal Court (Curia Regis) during his reign, and juries of twelve men from the ‘hundreds’<sup>3</sup> were called to ‘consider any accusations made’ against the accused (ibid). In 1178 Henry II appointed five members of the Curia to form a special court of justice, and these justices, unlike the other members of the Curia, did not follow the Kings court from place to place, but remained in one place, becoming the Kings Bench (Hibbert 2003, Hostettler 1994). With these professional judges assisting him with lawful control, Henry II introduced a jury of presentment or indictment, made up of twelve neighbours from within the hundred and four from townships formed to inform the court of ‘what crimes had been committed’ (Hostettler 1994:36). In 1361, Justices of the Peace were proclaimed by Statute, slowly bringing to an end the hundred and communal courts (Hibbert 2003, Hostettler 1994). It was not, however, until the Act of Settlement (1701) that the independence of the judiciary was established (Hostettler (1994:92).

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<sup>2</sup> A Trial by Ordeal could mean an accused person having to either place their hand in boiling water to retrieve an object, lift a red-hot piece of metal, or walking over hot ploughshares. If they failed to do so they were declared guilty.

<sup>3</sup> Shires were divided into ‘hundreds’ - a district with a number of villages - and each had their own court which sought to punish offenders

The way and means whereby offenders are punished form part of our judgements about the evolution of western democracy. From around the mid nineteenth century on, and under the influence of penal reformers, punishment was ‘intended to be dispensed with a kind of productive frugality, reforming and rehabilitating criminals’ and the more it did so ‘the more it would be thought of as civilised – advanced, socially just’ (Pratt 2002:1). Against this, numerous researchers have pointed to the uneven impact of ‘justice’ with Hostettler (1994:194) seeing punishment as ‘ultimately an instrument of control by the governing class. As the material presented later in the thesis will show, and in the words of Findlay et al (1994:261) ‘there are some people who are more prone than others to receiving unjust treatment at the hands of the ... criminal justice system’ with factors such as age, gender, race and class mediating peoples ‘distance from the centres of power in our society which inspire, direct and administer criminal justice’ Findlay et al (1994: 308).

The punishment of offenders has traditionally been seen as a mix of the principles of retribution, deterrence, rehabilitation, as well as offering a degree of protection to the community (Findlay et al 1994:191; Pratt 2002, Von Hirsch 1998). Under this mix shelter discussions on proportionality and desert, law and order, severity and social deprivation, (von Hirsch 1998 in Tonry ed 1998:672) with the associated penal arrangements, forming what Findlay et al (1994:186) describe as ‘a complex set of interlinked processes and institutions rather than a uniform object or event’.

As a justification of punishment, retribution purports to cancel out or diminish the gains or benefits of the crime. It comes into play in cases where a particular person or group of

people have been hurt and/or where the failure to punish would make it unfair on law abiding people (Findlay et al 1994:215). Hostettler (1994:182) sees retribution as ‘an essential ingredient of punishment’ adding that ‘it was also required to deter’. Retribution also includes the notion of ‘proportionality’ where the punishment has to reflect the gravity of the offence’ (Hirsch in Tonry 1998:660). In this sense it evokes the notion of ‘just deserts’ with punishment demonstrating ‘community outrage proportional to the nature of the offence’ (Findlay et al (1994:215).

In its turn, deterrence targets both the specific offender, and the general community, in order to discourage further criminal activity (Findlay et al 1994:192). It means that the sentence has to strike a balance between deterring further crime and remaining just and proportioned to the damage inflicted. Bentham’s argument that the principle of ‘less eligibility’ could only be achieved if prison conditions were significantly worse than those experienced by the ‘lowest of the honest labouring classes’(Findlay et al 1994:194), has continued to influence the level of material comfort available in prisons, with governments sensitive to any perception that conditions have become ‘too soft’.

The use of punishment as a tool of rehabilitation is designed to influence the offender ‘away from future criminal behaviour in favour of law abiding behaviour (ibid). Behind it lies the sense that criminal behaviour is ‘a product of antecedent causes which can be scientifically identified’ and that remedial strategies can therefore be developed which will lead to the transformation of offenders ‘into law abiding people’ (Findlay et al 1994:216).

In the modern state various forms of punishment are available to the judiciary. Currently these include imprisonment as well as what Tonry (2002:685) describes as intermediate sanctions, namely 'boot camps, intensive supervision orders, house arrest, electronic monitoring, community service orders, fines and day-reporting centres'. The spectrum and severity of punishments deployed at a particular time, depends on the political climate, for as Findlay et al (1994:244) note 'the notion of justice which is posited as the hallmark of good sentencing is also very much connected with public opinion' (and in the current climate, conservative governments back popular moves for harsher punishments.) However, individual variations among judges occur with Freiberg (2002:4-6) noting that for every judge who attempts to bring shame, humiliation and tougher penalties to an offender, there is another who finds loopholes in mandatory sentencing rules, bringing about limits to various excesses of punishment.

Notions on what constitutes 'dangerousness' also change over time, for they, like punishment, are 'not unshakeable nor beyond challenge' Garland (1990:4). Garland suggests that 'doubt, dissatisfaction, and sheer puzzlement has begun to emerge around our modern penal practices' with institutions taking on 'a quasi-independent life of their own'. In the wake of the move to 'let the punishment fit the crime' Hogg and Brown (1998:3) remind us that the more punishment 'mirrors the crime, the greater the risk of losing sight of any difference between them'. This they say establishes a 'cycle of violence and counter-violence in which the means ostensibly adopted to preserve a civil society end up threatening it' (ibid).

As far as penal reform is concerned, Brown and Wilkie (2002: xx) suggest that ‘while reform efforts have not been wholly abandoned, they are approached with caution for fear of political backlash from the media and populist politicians. Significant improvements in some areas have occurred but largely on the quiet’. Arguably, this prevails in Western Australia, the state under study in this thesis, where the ability to bring about positive change appears stifled by the lack of political will to move away from harsh penalties, particularly imprisonment. And where politicians act to appease public and media outrage ‘neither the discourse nor the constituencies of public support for penal reform are built up’ (Brown and Wilkie 2002:xxi). As Garland (1990:1) suggests, this makes it difficult to engage in open discussion on penal reform and its associated bureaucratic processes. It is to the history of this system in Western Australia, and to its structure, that the chapter now turns.

## **Historical Background**

### ***The racialised base of settlement.***

The colonisation of the Swan River Settlement was based on exclusionary policies that saw the original inhabitants ‘pushed to the inhospitable fringes’ (Collins 1988:19), treated as inferior, and outcast in their own lands. Confronted by Aboriginal people not keen to see their land taken from them, the majority of early settlers saw them as ‘simply an impediment to taking up the land...considered as part of the flora and fauna...something to be cleared from the land’ (McConnochie et al 1993:58), and ‘an irritant, especially because of their persistent killing of livestock’ (Thomas and Stewart 1978:122). Similarly, Rowley (1970:19) notes that the interaction between local Aboriginal people



and settlers led to reprisals that ‘tended to become an attempt to wipe out the Aboriginal altogether, since men, women and children were often slaughtered indiscriminately.’

McConnochie et al (1993:58) argue that it was not until the arrival of Macquarie in 1810 ‘that any serious attempt was made to face the problem of Aboriginal-white relations in the colony,’ and that by this time Aboriginal communities had been ‘dispossessed of their traditional hunting grounds, and forced into poverty, dependence and poor health.’ Increasingly, the Aboriginal populations were being seen as ‘genetically incapable of becoming useful’ and ‘destined to disappear before the racial and cultural superiority of the white man’ (McConnochie et al 1993:62).

The British Government, through the House of Commons Select Committee on Aborigines in both 1837 and again during 1838, heard reports of the excesses used against Aboriginal people during the settlement of the colony. The view of the committee was that the blame for these excesses lay with the convict and ex-convict population, the failure to address the competition for land, and the land-holders’ attitudes to the local Aboriginal population.

From the 1850s, racism, ethnocentrism and Social Darwinism were supported by the various colonial, and later, representative governments (McConnochie et al 1988). It was a period of categorising and stereotyping different races and placing a greater value on British culture and (white) ‘superior ways’ (Duguid 1978:4).

Social Darwinism, then, emerged as a major component of western views about race, and about the relationship which should exist between western colonial

societies and the people which they had conquered. These beliefs provided the justification for the development of policies, strategies and popular beliefs which emerged in Australia during the 19<sup>th</sup> century. (McConnochie et al 1988:49)

A perspective of white superiority remained throughout the period of colonisation and later waves of immigration, becoming institutionalised through the 1901 Immigration Restriction Act, locally known as the White Australia Policy (Collins 1988). British values and customs were not only regarded as superior, they were enforced by British law and protected by local police.

During the 1928 federal election, and just following the Conniston massacre, Prime Minister Stanley Bruce pledged to keep the Australian population '98% British' with the central platform being the 'White Australia Policy' (Cribbin 1984:158). Contempt for Aboriginal people continued and was placed into legislation. Both the Aborigines Act of 1905 and the Native Administration Act (WA) 1936, gave guardianship of Aboriginal children to the Commissioner for Aborigines and permitted and encouraged the removal of Aboriginal children from their families and culture, thus placing at risk 'the Aborigine's very existence as a distinct racial and ethnic community' (Haebich 1988:349).

The police force was formed during this period and, although many Aboriginal people served as trackers with the newly formed force ([www.police.gov.wa.au/history](http://www.police.gov.wa.au/history)) it was the police who were called in to act on behalf of government policy and landowners, and again later during the removal of children from families, and families from their traditional lands.

### *Early penal developments in Western Australia*

Convicts were among the first groups of European people to settle in Western Australia, and one such group of ‘twenty three prisoners under the command of a Major Lockyer’ (Thomas and Stewart 1978:1) landed in 1826 at King George’s Sound, Albany, from Sydney to ‘establish a British presence in the region amidst fears of French occupation’ (Website: Dead Persons Society Project 2004:1).

The proclamation of the Swan River Settlement was made in June 1829 and, together with the appointment of Captain James Stirling as Lieutenant Governor of the colony, the foundation of the Western Australian criminal justice system was established under the ‘authority of the British Secretary of State for the Colonies’ (Justice Online: Courts History 2004). Stirling was the sole arbiter on civil rights and legal matters until, at the end of 1829, he ‘appointed a magistracy, consisting of justices of the peace, to deal with the growing amount of petty crime and drunkenness’ (ibid). These justices presided over both the Courts of Petty Session and, for the more serious charges, the Courts of Quarter Session.

British law was used by eight Justices of the Peace, who were appointed in 1829 to deal with all judicial matters. The first hearing was held in July 1830. According to the Department of Justice, ‘Only four months each year were allocated for court hearings. However, by 1843 there were enough cases to justify the court opening every month’ (www.justice.gov.au/courts). Between 1830 and 1836, the Anglican Church of St James was used each Saturday morning for court proceedings and, in 1837 Western Australia's

first Supreme Court was opened. Governor Stirling continued to be the arbiter in the Civil Court until 1832 when a Commissioner was appointed. Many offenders were sent offshore to Rottnest Island which was used for local colonial offenders from 1838 (Website: Dead Persons Project 2004:2). Governor Stirling had also appointed 'a few part-time constables to maintain public order in Perth and Fremantle in 1829'. Later a mounted police troop was formed in 1834 and in 1849 the Legislative Council passed the first Police Ordinance, confirming policing duties, powers and responsibilities (Police Union Website: [www.wapolun.com.au](http://www.wapolun.com.au)).

On May 1<sup>st</sup> 1849, Western Australia was nominated by Queen Victoria on advice from her Privy Council as a place to which convicts could be conveyed and, on June 1<sup>st</sup> 1850, Fremantle received the first convict ship, the *Scindian* with seventy five convicts and fifty pensioner guards (Bateson 1974). The *Scindian* had sailed from Portsmouth under Master Jas Cammell and Surgeon John Gibson, on April 4<sup>th</sup> 1850 taking 89 days to arrive at Fremantle on June 1<sup>st</sup> 1850 (ibid). Also, in 1849 Western Australia was declared a colony by Britain:

In May 1849, after a complex series of manoeuvres between, on the one hand the Legislative Council and various Governors in the Colony and, on the other hand, the British authorities, the latter decided to act (to a large extent, ahead of colonial opinion), by issuing an Order-in-Council declaring Western Australia as a Colony to which convicts could be sent. This Order was published in the Colony in November 1849 and in the following months the Legislative Council agreed to this Ordinance setting out the terms under which the convict system would operate (Black 1991:22).

This was at a time when other colonies were trying to halt the flow of convicts to their settlements. Previously, as recorded by Elliot (1978:3), the British government had made a pledge that 'convicts would not be sent to the new settlement', something that it was

asked to reverse by colonists in Western Australia due to labour shortages throughout the colony. Throughout this period, the British government received complaints from anti-transportation groups who suggested that transporting convicts ‘lowered the tone of the country...stifled development, and inevitably produced more crime’ (Sweeney 1981:161). Transport to van Diemen’s Land stopped with the last of the transport ships in November 27<sup>th</sup> 1852, and yet 7,065 prisoners were sent to Western Australia over the next fifteen years until January 9<sup>th</sup> 1868 when the Hougoumont arrived with the last 250 convicts (ibid).

The first purpose built prison in the colony, The Round House in Fremantle, effectively operated under British rule and, as Thomas and Stewart (1978: 6) report, ‘following the English tradition, it was decided that the Quarter Sessions<sup>4</sup> was to be the body which administered the prison’. However, the first Act dealing specifically with prisons was not introduced until 1849 following the British Privy Council’s recommendation that prisoners be transported to the colony. From 1859 to 1991 Western Australia’s major penal institution was Fremantle Prison, built using convict labour between 1852 and 1859 to house up to 1000 prisoners (Fremantle Prison: A Brief History:2).

During 1861 the Court of Quarter Sessions and the Civil Court were amalgamated to form the Supreme Court (Justice Online/Courts History 2004). The Court of Quarter sessions at this time had oversight of the first prison where ‘following the English tradition, it was decided that the Quarter Sessions was to be the body which administered the prison’ (Thomas and Stewart 1978:6). In 1886 the Full Court of the Supreme Court

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<sup>4</sup> The Quarter Sessions were established in 1829 by Stirling.

was established to deal with both civil and criminal appeals and later, in 1893, a Court of Appeal from Courts of Summary Jurisdiction was established, presided over by a judge of the Supreme Court. The Court of Criminal Appeal was constituted in 1911 ([www.supremecourt.gov.wa.au](http://www.supremecourt.gov.wa.au)).

The police force<sup>5</sup> was formally established in 1853 with the appointment of a Chief of Police together with a Code of Rules, forming an administrative structure to assist with day to day policing. It is recorded in the history of the police that in 1861 ‘a second and expanded Police Ordinance was passed to clarify the chain of command, the powers and responsibilities of members and the various offences they had to deal with’ ([www.police.wa.gov.au/history](http://www.police.wa.gov.au/history)). The Police Act was proclaimed in 1892. However, the management of the police was, according to the Police Union, ‘largely in the hands of colonial gentry, former military men and public servants...until the era of Commissioner Robert Connell, who took rein in 1912’ (Police Union website 2004:1). The Police Act has also been criticised as being ‘patently biased against marginalised groups’ (Beresford and Omaji 1996:106). Section 46 of the Act gave broad powers to any officer or constable of the Police Force, so that they:

may take into custody, without a warrant, any person who, within view of such officer or constable, shall offend in any manner against this Act, and whose name and residence shall be unknown to, and cannot readily be ascertained, by him (Police Act 1892, Section 46 cited in Beresford and Omaji 1996:43).

For over fifty years the police force was a male-only domain, and not until 1917 were any women appointed, and then only with limited roles. According to the official record,

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<sup>5</sup> Later changed to the Western Australian Police Service (WAPS)

women were ‘something of a separate entity and carried out quite specialised functions until being integrated into general policing in the 1970s’ (Police Brochure: About Us 2004:1). Issues of inequity among women officers continue to be raised in the current service and are addressed in the Strategy for 2001-2006. The Police Service’s Annual Report points to some gains in women police numbers and promotion and yet reports that:

Whilst we are increasing the number of women officers being recruited and promoted there are still problems of equity which have been highlighted through feedback from staff and management and Equal Employment Opportunities surveys. (Annual Report 2003:3)

### **The current structure**

Historically, the West Australian criminal justice system has been found wanting in both process and outcome in relation to its treatment of early convicts and Aboriginal people. Current arrest, court and prison figures indicate that there is still an over representation of Aboriginal persons, people with mental health diagnoses, people who are unemployed and those who have received little or no education.

In administrative terms, the criminal justice system includes the West Australian Government’s Department of Justice and the Police Service, specifically the Judiciary, Courts, Prisons, Community and Juvenile Justice Sector, with Police and Public Prosecutions, Parole Board, and non government services to offenders, ex-prisoners and their families. Alongside this sit lawyers, prisoner support groups, chaplains, Deaths in Custody Watch Committee, and welfare agencies providing advocacy, therapeutic programmes and support to offenders and their families. In addition, there are The Office

of the Inspector of Custodial Services, the Corruption and Crime Commission, Ombudsman's Office and the Office of Health Review as the government's main regulatory bodies.

Court services, police service, prisons, prisoner transport and criminal prosecutions are all currently under the direction of the Minister for Justice, Police and Emergency Services and, with the exception of the Police Service and its Commissioner, the other agencies are under the Director General of the Department of Justice. I start my review of these bodies with an overview of the statistical picture.

### *Court Statistics*

The Court Statistics (Table 1) represents all criminal cases coming before the courts in Western Australia for each of the three jurisdictions during 2002/3. The majority of cases remain in the Magistrate's Court, which is the least expensive court in terms of cost per trial and which finalises the vast majority of cases within the standard 26 weeks. The District Court finalises 75 per cent of its cases within 52 weeks at an average cost of \$3755 per case over a three day period, while the Supreme Court is able to finalise 55 per cent within its standard 32 weeks. The Supreme Court is the most costly at an average of \$5,350 over an average four day trial. In total, 87,094 cases came before the criminal courts during 2002/03. The statistical records do not indicate the number of people who appear in the criminal courts each year or the number of times a person appears for the same or different charges in one or more jurisdictions.



Table 1. Criminal Court Statistics for 2002/3

	Supreme Court	District Court	Magistrates Crt
Cases received	529	2,868	83,697
Cases finalised	400	2,868	84,093
Cases to be dealt with	335	1,731	42,263
Backlog <sup>6</sup>	42	527	6,696
Finalised within standard	32 weeks-55%	52 weeks-75%	26 weeks-92.5%
Finalised before trial	52%	81%	79%
Finalised by trial	48%	19%	21%
Average length of trial	4 days	3 days	0.2 days
Average cost of trial <sup>7</sup>	\$5350	\$3755	\$320

Source: Department of Justice Court Statistics [www.justice.wa.gov.au/courts](http://www.justice.wa.gov.au/courts)

The accountability and performance of courts are measured in terms of operational costs and ability to complete cases within budget and by a standard timeframe. There are no measures that refer to the quality of the trial in terms of satisfaction to the victim of crime or the offender, or that the trial was seen by parties as providing justice or that it was considered fair by any party. Although time is taken into account as a performance indicator the criteria used fails to address the time-frame preferred by people awaiting trial.<sup>8</sup>

### *Crime Statistics*

Offence and police/offender contact data is processed through the Police Service's Offence Information System (OIS) database generated from an offence report following, in most cases, a report of a crime from a member of the public (Morgan and Fernandez

<sup>6</sup> Still to be finalised at year end

<sup>7</sup> Combined cost of civil and criminal matters before the court

<sup>8</sup> During a trial of restorative justice conferencing in the Perth Magistrates Court between 2001/02, timeliness was a measured outcome that rated as highly desirable by offenders and victims (Goulding & Steels (2002)

(2002). Criminal offences are officially recorded once an offence comes to the notice of the police, although a police officer may witness an offence and intervene directly to make an arrest.

During the period July 2003 to June 2004, a total number of 245,617 crimes were reported<sup>9</sup> to Police in Western Australia. The clearance rate for crimes varied between Regions and among Districts with the Metropolitan Region showing lower clearance rates than other regions. The clearance rate for property offences was significantly lower across all jurisdictions than offences against the person and other offences<sup>10</sup>. The conviction rate (percentage) for matters placed before the courts by the Police Service, 2002/03 to 2003/04 is listed in Table 2.

Table 2. Conviction rates 2002-3 and 2003-4

	2002-3	2003-4
Overall conviction rate	96.2%	97.7%
Pleas Guilty before trial	90.2%	93.8%
Rate of conviction matters listed for trial	61.4%	62.9%

Source: WAPS Annual Report key performance indicators (2004:21)

According to the Minister for Police, there has been an overall 15 per cent decrease in crime, with the September 2004 figures showing ‘some of the most impressive decreases ...seen for individual offences’(Media Release October 21<sup>st</sup> 2004). These included a 39 per cent decrease in aggravated robbery, 21 percent in commercial burglaries, a 34 per

<sup>9</sup> Reported offences are selected offences reported to or becoming known to police, and resulting in the submission of an offence report in the Offence Information System or Frontline Incident Management System. Excludes offences against public order, such as disorderly conduct and offences against the Firearms Act, Liquor Licensing Act and a number of other offences against the statute laws of this State and the Commonwealth (<http://www.police.wa.gov.au/AboutUs/pdf/Crimestatnotes.pdf>)

<sup>10</sup> Offences are classified according to the Western Australia Police Service offence codes.

cent reduction in motor vehicle theft, 17 percent decrease in theft, a 20 per cent drop in sexual assault and over 38 per cent drop in homicide. (Media Release: Minister for Police, October 21<sup>st</sup> 2004).

The Western Australian Police Service (WAPs) claim in their Annual Report (2004) that the rate of household victimisation has shown a steady downward trend to 10.4 per cent in 2002 while the rate of motor vehicle theft has decreased to be the lowest in Australia. Despite this, the size of the criminal justice system keeps increasing. The net cost of the Western Australian Police Service for 2004 was \$574,984,000 compared to \$533,655,000 for the previous year (Annual Report 2004: <http://www.police.wa.gov.au/>)

Table 3. Reported Crime Statistics for year 2003/04<sup>11</sup>

	Western Australia	Metro Region	Southern Region	North Eastern Region
Total offences against person	24479	15992	3287	5200
Clearance rate / person	78.6	71.6	91.2	92.3
Total offences against property	204709	157752	24229	22728
Clearance rate / property	20.5	17.2	28.7	34.7
Total other offences	16429	10457	3426	2546
Clearance rate / other <sup>12</sup>	88.6	87	89.8	93.8

Source: [www.police.wa.gov.au/AboutUs/WhoAreWe](http://www.police.wa.gov.au/AboutUs/WhoAreWe)

Morgan and Fernandez (2002) point out that the relationship between offences and police-offender contacts is complex. They suggest that not all reported crimes lead to the apprehension of an offender (a police/offender contact), and that the police are more

<sup>11</sup> This indicates when the crime was reported and not necessarily when it was committed.

<sup>12</sup> Other offences are categorized by the Police Service as Breach of Restraint, Drugs (Traffic) and Drugs (Possession)

likely to apprehend an offender for a serious assault than a burglary. Some cases may involve multiple offenders but only one offence or, conversely, a single offender may commit several offences. Offences against persons are deemed serious and cases are more likely to be followed through until cleared, while offences against property can involve numerous charges (eg multiple frauds, multiple theft) and several of these offences may be dropped during the hearing stage or grouped together under one set of charges. Hence counting police/offender contacts is not the same as counting individual offenders.

Morgan and Fernandez (2002) also note that contacts between police and offenders are shaped not simply by offending behaviour but also by public and police reaction to that behaviour. Not only are some types of crime observed and reported more frequently than others but also certain social groups are more readily apprehended than others, particularly Aboriginal people, youth, and possibly those with behavioural and intellectual disabilities.

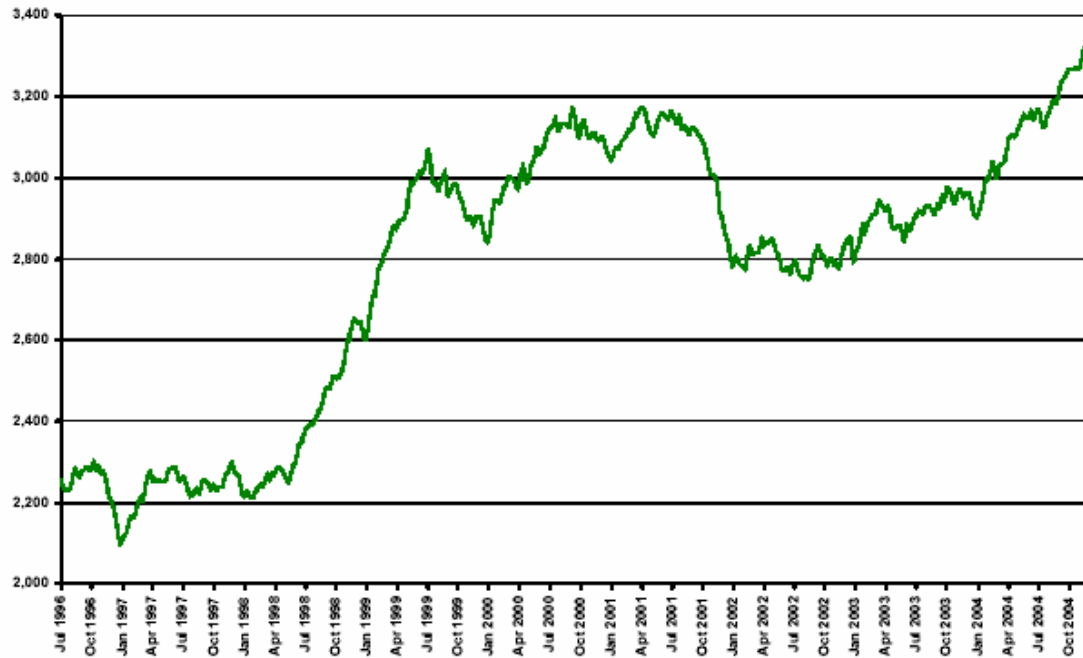
### ***Adult offender and prisoner numbers***

Over the past decade there has been an increase in Western Australia's prisoner numbers and the rate of incarceration per 100,000 people<sup>13</sup>. This trend has continued in recent years, with figures showing an increase in the number of people held in custody, both remand and sentenced, since December 2001 (Tables 4 and 5).

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<sup>13</sup> People over age 17 yrs

Table 4. Thursday Census of State Prisoner Count, including those in hospital and trustees in lock-ups



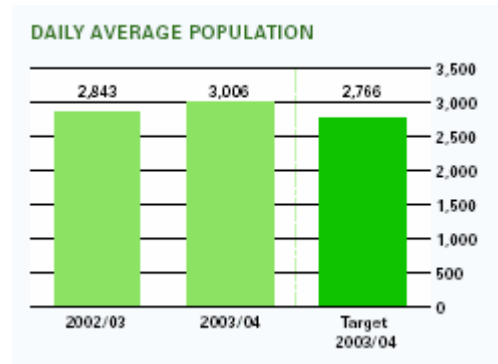
Source. Department of Justice. Policy, Planning & Review, Monthly Report Dec 2004

Western Australia's male prisoner incarceration rate has increased from an average of 364.4 per 100,000 of adult population in 2002 to 401.6 in Sept 2004, more than double Victoria's rate of 178.8, and well above New South Wales rate of 312.6 and South Australia at 241.7 (ABS Corrective Services Sept 2004:12) The incarceration rate for females in Western Australia was 27.7 in 2002 and has increased to 35.8 for Sept 2004, compared with 13.4 for Victoria, 15.7 South Australia and 21.2 New South Wales (ABS Corrective Services Sept 2004:13).

Western Australia's total prisoner incarceration rate for 2002 was 195.1 per 100,000 adult population and now stands at 217.6 for September 2004. This is compared to the national average of 153, Victoria 94.1, South Australia 126.5 and New South Wales 164.6 (ABS Corrective Services Sept 2004:8). The Department of Justice's 2003/04 average daily

prisoner population target was surpassed as indicated in Table 5. In 2002 the daily average was 2803 whereas in September 2004 it has risen to 3243 (ABS Corrective Services Sept 2004:7).

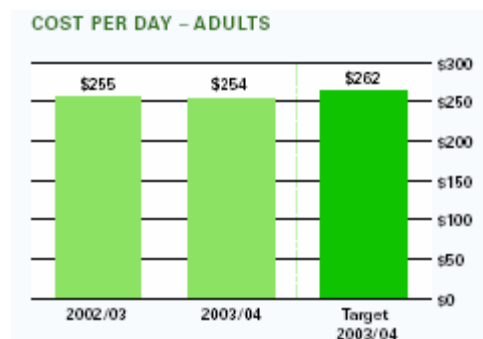
Table 5: The average daily population of people held in custody in Western Australia



Source. Department of Justice annual Report 2004:160

The cost of keeping an adult offender in custody (Tables 6) reflected a small decrease due to the increased number of prisoners being held overall while the total 2003/04 budget for managing adult offenders increased to \$316,764,000 from the 2002/03 budget of \$299,330,000 (Annual Report 2004:160)

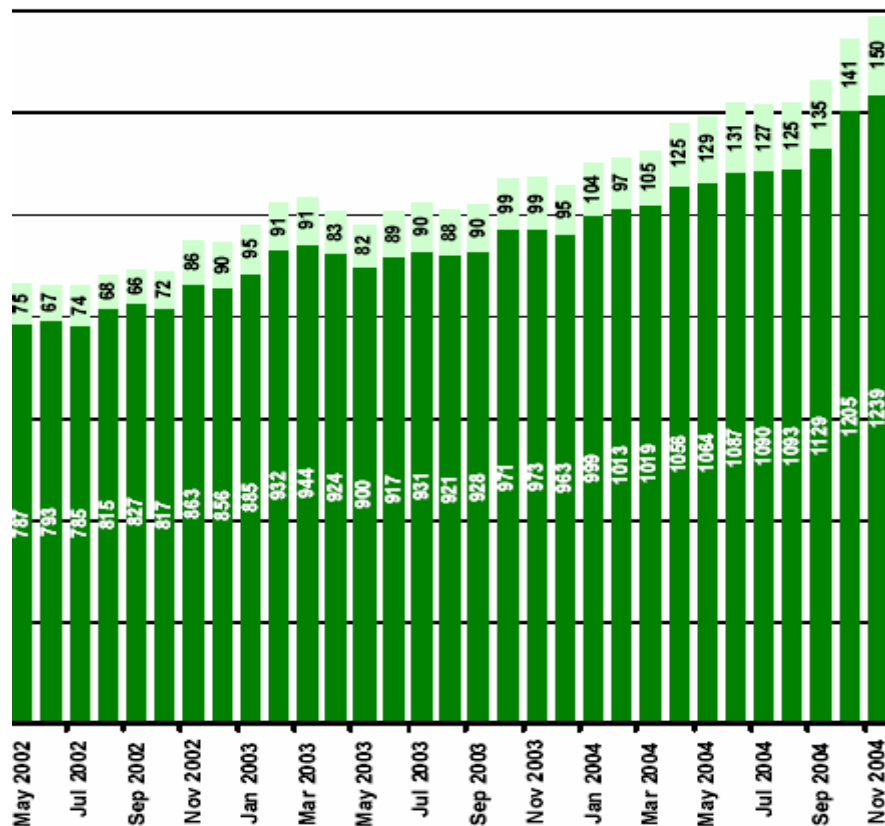
Table 6: Cost per day of keeping an adult offender in custody



Source. Department of Justice annual Report 2004:160

Despite the development of a strategic plan for Aboriginal Services 2002-2005, the last few years have seen a noticeable and steady increase in the number of Aboriginal people in prison. The number of Aboriginal women offenders held in custody has doubled to 150 during December 2004, compared with 75 women in May 2002, while the number of Aboriginal males in custody rose by 63 per cent from 787 in May 2002 to 1239 in November 2004 (Table 7)

Table 7. Number of Aboriginal Persons in Prison by Gender from May 2002



Source. Department of Justice. Policy, Planning & Review, Monthly Report Dec 2004

Not since June 2002 has the number of prisoners held in custody dropped below 2,800 with the November 2004 total peaking at above 3,300. At the same time the number of

persons on Community Correction Orders has decreased from an average of 5,218 in 2002-3 to 5,143 for 2003-4. The number of people held in prison is likely to continue to increase given the current political focus on prison as a response to crime.

The level of re-offending in Western Australia remains a critical issue. The rate of re-offending as defined in the Department's Annual Report (2004) is the rate in which an adult offender returns to the offender management system following release from prison or a community order. The cut-off period is two years from release from the management system and the rate excludes fine default sentences, exits to and commencements of post-prison community corrections orders, conditional/monitored bail orders and work and development orders (Annual Report 2004:159). Successful completion of community based orders decreased from 65 per cent in 2002/3 down to 63.5 per cent during 2003/4, suggesting that 36.5 per cent failed in some way (Department of Justice, Annual Report 2004:159). In relation to prisoners leaving adult prisons, the Department of Justice suggests that 'about 45 per cent of Western Australian prisoners, excluding fine defaulters, released without supervision, return to prison within two years of their release in the community' (Statistics, Adult re-offending rates: [www.justice.wa.gov.au](http://www.justice.wa.gov.au)).

### ***Police Service***

The current Police Service in Western Australia has its origins in the early Police Force and its rules of 1853. It is answerable to the Government through the Minister for Police and Emergency Services. Currently the service operates in a structure of Divisions and Commanders, with a Commissioner of Police as head of the service, responsible for



oversight of the service and its relationship to the government's law and order policies. The organisation's name changed from Police Force to the Western Australia Police Service in 1994 under the direction of Commissioner Robert Falconer ([www.police.wa.gov.au/history](http://www.police.wa.gov.au/history)). In 1898 an officer numbering system was introduced and since then over 10,000 men and women have been employed in the service (WA Police Union: [wapolun.org.au](http://wapolun.org.au)).

The Western Australia Police Service covers the largest single police jurisdiction in the world: 2.5 million square kilometres. At July 2004 nearly 5,000 sworn police officers provided services to a population of 1.9 million through three regions with 14 districts, as shown in Table 4 ([www.police.wa.gov.au](http://www.police.wa.gov.au)).

Table 4. Western Australia's Police Regions and Districts.

Metropolitan Region	North-Eastern Region	Southern Region
South-East Metro District	Goldfields-Esperance District	Great Southern District
South Metro District	Kimberley District	Peel District
North-West Metro District	Mid West-Gascoyne District	South West District
East Metro District	Pilbara District	Wheatbelt District
West Metro District		
Central Metro District		

Source. [www.police.wa.gov.au/AboutUs/WhoAreWe](http://www.police.wa.gov.au/AboutUs/WhoAreWe)

Following a reported crime or incident, the police are responsible for arrest, investigation and interrogation, and for bringing the suspected person before the court. In all cases it is the duty of the police to collect evidence and witness statements and, in matters before the Court of Petty Sessions, the Police Prosecution Branch prosecutes the cases. The power to arrest is given to police officers who also have the legal authority to use

reasonable force in the apprehension of suspects. Arrest means that a person is no longer free, but under the control of the arresting officer where failure to obey, or to struggle or seek escape is further punishable at law. The Ethical Guidelines for the West Australian Police Service (2004:15) underline the point that:

Unlike other members of the community, police officers have the legal authority to use reasonable force, deprive of liberty and, in extreme circumstances, take life. This authority places an onerous responsibility on all sworn members to be even more accountable in any actions taken.

Bringing offenders to justice is a major focus of the recent business and strategic plans of the police service. The desired outcomes include a decrease in the number of reported crimes and an improvement in the clearance rate of reported crimes (Business Plan 2004:11). The effectiveness of the service's abilities in these respects has been assisted through technological advances, DNA sampling, and strategic partnerships with other agencies. In this respect, the Business Plan (2004:10) comments that 'our ability to be effective is enhanced by a number of factors including technological and scientific resources, an intelligence-led policing focus and building on strategic partnerships with key stakeholders within the justice system.

A community safety strategy, and a strong 'law and order' focus are presented in the Police Strategic Plan 2001-2006 which outlines a crime prevention role targeting repeat offenders and 'hotspots' of crime, stating that 'the focus of our role in relation to crime prevention is on the harder-end of the continuum through targeting known hot spots and repeat offenders'. It also endorses early intervention and an interagency approach to fighting crime:

We play more of an influencing role to assist other relevant agencies to adopt early intervention strategies, and develop education programs to encourage individuals to take responsibility for their own safety and reduce their likelihood of becoming victims of crime. (Annual Business Plan 2003 – 2004:4)

Under The Criminal Investigation (Identifying People) Act No 6 of 2002, legislation has been available to police since 2002 allowing them to collect identifying material and details from suspected persons and witnesses while, suspects and people charged with a serious offence may also be asked to volunteer their identifying particulars. They are not required to give consent although ‘reasonable force’ may be used to obtain such samples if they refuse. Under the Act, police officers are able to obtain a DNA profile and other identifying particulars such as hair, dental and feet or hand prints from any person, including a suspect or witness who can assist them with their inquiries into a crime. Material may be obtained through intimate and non-intimate procedures (Police Service Website *Identifying People* 2004:1).

Findlay et al point out that the laws of evidence serve to ‘regulate what material a court may consider in determining factual issues; how that material is to be presented in the court; and how the court actually decides the factual issues on the basis of the evidence’ (1994:169). They also maintain that evidence collected by police during ‘confessions’ can be fabricated ‘with considerable ease by unscrupulous police... alternatively...by use of improper methods such as threats, inducements, or deceptions’ (ibid). Further evidence of police breaches both against their own ethical standards and against the law can be evidenced from the *Royal Commission into Whether There Has Been Any Corrupt or Criminal Conduct by Western Australian Police Officers* (2003). The current police guidelines do, however, insist that officers have ‘a responsibility to exercise a duty of care and protection of the community and those in our custody’ (WA Police Service

Ethical Guidelines of 2004:15). These guidelines are formulated to encourage consistency in ethics, integrity and professional behaviour. Their main principles are: honesty; respect; fairness; empathy; openness; accountability, and respect (ibid).

Complaints against the police are handled, at least initially, through local command structures, and if not resolved, will be forwarded to the Specialist Police Complaint Administration Centre, formed by the amalgamation of the Internal Affairs Unit and the Internal Investigations Unit in July 2004 (WAPS Annual Report 2004:39). The Internal Affairs Unit of the Police Service formed part of the Professional Standards Portfolio and was responsible for eliminating corruption within the Service, investigating corruption, criminality and serious misconduct. The Complaint Administration Centre encompasses this role and is in a position to bring about disciplinary charges in the event that they are identified during the course of a criminal investigation.

In addition, the Police service may cause action to be taken by the Corruption and Crime Commission (CCC) which is empowered to pursue officers who are in breach of the law or face charges of misconduct. The Commission may grant 'exceptional powers' (<http://www.ccc.wa.gov.au/about.php>) to the Commissioner of Police to investigate organised crime. The Commission has jurisdiction over more than 115,000 West Australian public officers working among over 550 agencies. Under the Corruption and Crime Commission Act 2003, all public authorities have an obligation to notify suspected incidences of misconduct by public officers in their agency. The general public may also bring a complaint of misconduct to the Commission (<http://www.ccc.wa.gov>).

During 2003/4, 75 police officers were investigated through the police disciplinary process and, of these, 29 officers were charged with 49 breaches under the Police Regulations, while a further 46 officers received unfavourable reports and 22 officers were the subjects of 103 statutory charges (WAPS Annual Report 2004:41).

### *Criminal courts*

Western Australia's courts are administered by the Department of Justice's Court Services Division whose official mission, in partnership with the judiciary, is described as providing 'a court system which is responsive to community needs for access to justice' (Department of Justice: [www.justice.wa.gov.au](http://www.justice.wa.gov.au)). It is expected to 'facilitate speedy and affordable court and tribunal processes that also recognise the independence of the judiciary (Court Service Brochure 2004:2).

The Courts that have jurisdiction within Western Australia operate within a hierarchical structure with lower courts bound by decisions of higher courts. All criminal cases are first listed to be heard in the Court of Petty Sessions presided over by a Magistrate. More serious cases are transferred to the District Court list for hearing before a District Court Judge and, if elected, by jury, or sent to the Supreme Court to be heard by a Supreme Court Justice and jury. To go above the Supreme Court a case must go to the High Court of Australia, the highest court in Australia. Courts with authority in Western Australia are the High Court of Australia, the Federal Court of Australia, the Supreme Court of Western Australia, the Family Court of Western Australia, the District Court of Western Australia, the Magistrates' Courts and the Children's Court. All courts are bound by statute and precedent.

As indicated, the process of going through the court begins in the lower courts. In the first instance the accused person is summoned to appear in the Magistrates Court to face the charges presented by the police prosecutor. The charges of a less serious nature that can be heard by a magistrate stay in these courts. Charges such as driving offences, shoplifting, being in possession of a prohibited substance, ordinary assault, (to which a plea of guilty is entered) may be heard at this stage, and a sentence handed down. On the other hand, the Magistrate may adjourn the case to a following hearing where a pre-sentence report, drug analysis, mitigating circumstances and testimonies in favour of the accused may be asked for and legal advice sought. If a plea of not-guilty is entered in these cases a trial date will be set and the accused will have the opportunity to seek further legal advice, be represented by a lawyer and prepare for trial.

Charges of a more serious nature are required to move to a higher court, and dates are determined for the first hearing in either the District or Supreme Courts, with the District Court carrying a 20 year maximum sentence. In appropriate cases and, where there is a plea of guilty, the case may be 'fast-tracked' to the District Court where sentencing will be expedited without trial. However, if a plea of not-guilty is given the case will proceed to trial in due course. The date for trial will be fixed at the earliest opportunity. In the District or Supreme Court this will generally mean that a jury made up of twelve community members will be empanelled to hear the case and present their findings to the Judge, although upon request by the accused, the case may be heard by a Judge alone. Witnesses may be called in a case where charges are contested. The Supreme Court of Western Australia hears the most serious of offences and may hand down a sentence of over 20 years. Cases before the courts are most commonly finalised either when a guilty

verdict has been reached and the process of appeal has been completed or, when a person is acquitted and sometimes when they are unfit to plead. Less frequently, cases will also be finalised when the prosecution withdraws from the case.

In terms of structure the Magistrates' Courts, which are made up of Local Court and Court of Petty Sessions, are presided over by Stipendiary Magistrates. They can impose a fine, community service order or custodial sentence (Department of Justice Brochure: 2004). In 2003 Magistrates Court's statistics show that 78 per cent of cases were finalised before trial whereas 22 per cent were finalised at trial. The average length of a trial was 0.2 days, and 93 per cent of cases were finalised within the standard 52 weeks (ibid).

The District Court, which was constituted under the District Court of Western Australia Act 1969 and introduced in 1970 to hear both criminal and civil matters, has 21 judges and one Commissioner of the Court. These are based in Perth although they regularly travel to regional areas. In 2003 District Court statistics show that 82 per cent of cases were finalised before trial, and 18 per cent by the trial. The average length of a trial was 3 days, and 74 per cent of the cases were finalised within the standard or 52 weeks (ibid).

The Supreme Court is composed of the Chief Justice of Western Australia, 17 other judges, two masters and nine registrars. It is also the main Court of Criminal Appeal, hearing appeals from all lower courts as well as the sentencing decisions made by single judges of the Supreme Court ([www.supremecourt.wa.gov.au](http://www.supremecourt.wa.gov.au)). The Supreme Court's statistical records show that during 2003, 47 per cent of cases were finalised before trial, whereas 53 per cent were finalised by the trial. The average length of a criminal trial was 3.75 days, and 70 per cent of the cases were finalised within the standard 32 weeks (ibid).

Monitoring of court process is undertaken through regular reviews of finalised cases, length of trial duration and average time of cases to completion. There is however, silence on the experiences of victims, defendants and their respective families. Both victims and offenders often share the same waiting area and court security may be required to maintain order. Victims have to leave the court area in view of the media and often pass the offender's family and, while there are limited services available at the court to assist them and their families, there is even less support available to offenders and their significant others. Families who watch relatives convicted and sentenced to imprisonment are mostly unsupported in their trauma, apart from limited services from the voluntary sector, chaplains, and lawyers.

The courts in Western Australia continually face pressure from politicians who, on both sides of the political divide, argue for a 'tough on crime' approach, commenting publicly about each other's policies and effectiveness at reducing crime. In addition, the independence of the judiciary has also been an issue. In January 2003 the Law Society took the unusual step of stating its concern over public criticisms of the sentencing decisions of the president of the Children's Court of Western Australia. The President of the Law Society of WA commented that:

Recent attacks on Children's Court President Judge Kate O'Brien undermined one of the fundamental conventions of modern society – the independence of the judiciary – and ignored the exemplary record of a judicial officer in one of WA's most demanding court roles... I welcome and support the recent comments by the Attorney-General...coming after a week of ill-considered and inappropriate comment from several opinion leaders in the community. The first and most important convention at risk of being lost in the current clamour is the independence of the judiciary from government, part of the separation of powers. The second is that judicial officers cannot make statements outside of court – and therefore are not in a position to defend themselves against attacks in the



community (Law Society President Elizabeth Heenan, Media Release 13 January 2003).

### *Court Custody Facilities*<sup>14</sup>

All courts have custodial facilities for the detention of people before and after a court appearance as required. People who present to the courts for a hearing on serious charges may be placed into holding cells at the Court Custody Centres, especially if there is the likelihood that they will receive a custodial sentence. A person receiving a custodial sentence will be kept in the holding cells until transport is arranged for them to be taken to prison. People appearing on lesser charges are unlikely to be held in the cells, unless arriving from prison or police lock-up.

Before July 2000, the West Australian Police Service (WAPS) was responsible for court security and the custodial facilities within them, while the Prison Service was responsible for transporting prisoners to and from court. In 1999 the then government decided to contract out court security and custody and prisoner transport to enable Police and Prison service personnel to concentrate on their core functions of policing and custody of prisoners. In January 2000, Corrections Corporation of Australia (now renamed Australian Integrated Management Services, AIMS) won the tender to provide for prisoner transport, court security, (as well as the development and operation of Acacia Prison) and, after July 2000 court security and custody services were joined under a

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<sup>14</sup> Police lock-ups are not included in this section, although I recognise the important role that they play in many jurisdictions. East Perth Lock-up is the central venue for collecting and returning prisoners between the Perth courts and the various prisons. Like many similar venues around the state, it has a role to play in maintaining safe and secure custody of prisoners.

contract between AIMS and the Director General of the Department of Justice. The monitoring of these services remained the domain of the Department of Justice under a contractual ‘purchaser/provider’ model. The Director General retains responsibility for ‘the security, control, safety, care and welfare’ of people in the court custody centres, and for monitoring the contracted services (Report of an Announced Inspection of Metropolitan Court and Custody Centres in November 2001:22).

In November 2002, the Office of the Inspector of Custodial Services<sup>15</sup>, Western Australia, made an inspection of the Metropolitan Court and Custody Centres. In its report of that visit the Inspector, Professor Richard Harding, suggested that staffing arrangements were inadequate in many facilities, commenting that ‘without exception, all custody centres stated that they requested casual staff from AIMS...and generally this request would not, or could not, be granted’ (Report of an Announced Inspection of Metropolitan Court and Custody Centres in November 2001:13). The report (2001:11) was also critical of AIMS senior management and the Department of Justice for the lack of monitoring and evaluation of the services. It raised five areas that needed to be addressed:

- Staffing arrangements;
- Training and professional development;
- Contract management and on-site support for staff from the contractor;
- Department Contract monitoring and grievance procedures; and,

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<sup>15</sup> The Office of the Inspector of Custodial Services was established in 1999 under the Prisons Amendment Act of that year, and commenced operations in June 2000 providing independent scrutiny of the prison system including prisoners transport, and court custody centres. The office is answerable directly to Parliament ([www.custodialinspector.wa.gov.au](http://www.custodialinspector.wa.gov.au)).

- The adequacy of physical court custody centre facilities.

Two years after this report was tabled in Parliament in April 2002 the then Justice Minister announced new security measures at the Supreme Court, Perth. These included armed escorts, the use of restraints, new cell locking systems and a new set of operational procedures for handling dangerous prisoners. This followed an escape by nine prisoners from the Supreme Court on June 10<sup>th</sup> 2004. The Minister directed the Department of Justice to ensure that prisoners using the Supreme Court Custody Centre would not pose further risks, commenting that:

The escape of nine dangerous criminals from the security area at the Supreme Court has highlighted major inadequacies at the Supreme Court lock-up. It is unacceptable that the Department of Justice (DOJ) failed to take stronger action earlier to remedy these shortcomings which have now put community safety at risk. I have directed DOJ to immediately implement a package of security measures which will ensure criminals can still be processed at the court building without posing any further risk. There will be an expansion of the security classification to include more prisoners in the high-risk category. (Justice Minister Roberts, Media release 12 June 2004 <http://www.ministers.wa.gov.au>)

Events surrounding the escape on June 10<sup>th</sup> 2004 revealed a clear lack of coordination between the various services under the umbrella of the criminal justice system. It also showed that there had been a failure to act on a number of previous agreements and recommendations. In particular, the Inspector's report tabled April 2002, had made it clear that the practice of delivering high risk prisoners to contractors to control and expecting contractors to perform high security escorts had been specifically excluded from the contract between AIMS and the government (Report of an Announced Inspection of Metropolitan Court and Custody Centres in November 2001:24). Hence the report had recommended:

As a matter of urgency, the Department should cease the practice of placing high security escort prisoners into the custody of Contract staff. Prisoners who have been assessed as posing a high risk should remain in the custody of specialised officers at all times (2001:36).

In addition, the Inspector claimed the Department of Justice failed to undertake its role in monitoring the custody services provided by AIMS. On this, the Inspector of Custodial Services (2001:22) notes that monitoring by the Department of Justice was:

commercially orientated and largely based upon a paper audit process...There are few field visits by Department staff to monitor the performance of Contract staff or to survey persons in custody to record their experiences at the hands of the Contractor.

### ***Prisoner Transport***

One of the earliest forms of prisoner transport was the method whereby West Australian police moved Aboriginal prisoners around the state in groups with prisoners chained to each other with a steel band or chain around each person's neck. By the end of the nineteenth century prisoners in the Perth and Fremantle areas were being escorted in secure horse-drawn carriages with mounted police as escorts with Elliot (1998:107) recounting that, 'A horse-drawn Black Maria was sent for to convey the prisoners to the lockup, while mounted police had to be used to keep the milling crowd at bay'.

To this day prisoner transport remains highly problematic. The common vehicle in use at prisons, the 'meat truck' as it is frequently called, has no individual seats or seat belts, rather a long metal seat each side of the truck, air vents at the top and steel bars across the two high windows that severely restrict vision (conversations with prisoners and two non-government organisations, including Deaths in Custody Watch Committee between 1994 and 2002).

In January 2001 prisoner transport was subject to review by the Office of the Inspector of Custodial Services. This review took place in the wake of the transfer of prisoner transport to AIMS in January 2000. This transfer included all authorised prisoner transport (with the exception of police service vehicles) between courts and prisons, inter prison transfers and visits, and prison to community health services.

According to the Report of the Inspector one of the main intentions of contracting out services was to replace an ad hoc, fragmented method of service delivery with an integrated, flexible and innovative service provided by the private sector. In this context, he acknowledged that:

This in turn had several side benefits, not the least the freeing up of law enforcement and justice personnel for “core functions”. It was well understood that more would be involved than merely substituting an identical integrated service for a fragmented one, and that qualitative change for the better must be incorporated. The Department of Justice was thus committed to improving the delivery of services, including the security, safety, comfort and wellbeing of prisoners (Report of an Announced Inspection of Adult Prisoner Transport Services 2001:8).

Against this, and following the inspection and subsequent tabling of the Report to Parliament, the Inspector referred to the Report on the office’s website<sup>16</sup> advising that the Department was failing to properly monitor performance, commenting that:

Despite the Department of Justice, the Department of Transport and AIMS Corporation all having some statutory or contractual responsibility for the design of the vehicles, no party was willing to take responsibility for the design that deprived prisoners of safety and basic amenities whilst being transported. This was an especially important issue in Western Australia’s northwest, where journeys in excess of eight hours are common (<http://www.custodialinspector.wa.gov.au/newoicsFrameset.html> 2003).

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<sup>16</sup>A brief Web abstract is produced for each report and presented on the Office of the Inspector of Custodial Service’s website. The Act requires any inspection report and annual report to be lodged with Parliament, but this excludes discussion papers and introductory notes.

The Inspector also suggested that disputes between the Department of Justice and the contractor undermined service standards and that the Department was failing to properly monitor performance. Commercial considerations were seen to be at the heart of the problem, leading to a serious failure in the core business of delivery of services:

The Department and the Contractor have focussed on commercial issues and have reached such a stage of mutual disillusionment that service quality is at risk, and neither party has monitored service quality in an appropriate way (Report of an Announced Inspection of Adult Prisoner Transport Services 2001:6).

Not only were prisoners denied access to food, water and toilet facilities on long journeys but ultimately, no party was acting in the interests of those exposed to the service – the prisoners themselves. The Inspector (2001:37) concluded that:

Transportation for those in custody is inconsistent in quality and, at its worst, unacceptable. The care, wellbeing and safety of prisoners have not been a paramount consideration, and this is exemplified in the entrenched practices highlighted and issues raised.

As a result of the inspection, the Inspector made a number of recommendations for action by the Department and the Contractor. These included: reassessing vehicle design with regard to the safety, comfort and wellbeing of prisoners; the development of policy and procedures for journeys; review of the use of prisoner restraints; and the development of performance monitoring measures (2001:35-6).

Despite these recommendations serious problems remain. From my recent observations and comments made to me as a prisoner advocate, women still have to travel with men throughout regional areas and vulnerable, disabled and ill prisoners are often required to travel in a locked vehicle whilst wearing restraint belts and handcuffs. The only safeguard for vulnerable prisoners is that the back of transport vehicles is sectioned off with a cage

for their use, keeping them free from attack by mainstream prisoners. In brief, the transportation of prisoners throughout Western Australia continues to be undignified, disrespectful and at times dangerous.

### **The prison system**

In the remainder of this chapter I engage with the prison system. I deal in turn with history, current structure, investigatory bodies and reports and rights and advocacy.

#### ***Historical background***

In eighteenth century Britain, complaints from prisoners, their families and at times from ordinary citizens raised concerns about the conditions and treatment of prisoners and the way in which prisons were administered. Hay (2004:1), records that it was the High Sheriff of Bedfordshire, John Howard, who led the reform agenda for prisons throughout England, embarking on inspections and recording evidence of neglect and disrepair. Despite Howard's efforts, Hay observes that the changes were painfully slow, and that there remained a failure to implement reform Bills. He reports that:

A major problem was the gap between legislation and implementation. Having parliament pass a reform bill was one thing, having parliament provide the money for inspection to enforce legislation was quite another. Even when genuine improvement in prison conditions did take place, it is difficult to know whether the motive was concern for the prisoners or concern to reduce the potential spread of disease to those outside the prison (Hay 2004 cited in [www.johnhoward.ca/bio.htm](http://www.johnhoward.ca/bio.htm)).

Newgate prison, London, was one of the prisons visited by Howard, and it was over fifty years later, in 1817 that Elizabeth Fry and eleven other Quakers, formed the Association for the Improvement of the Female Prisoners in Newgate Prison (Samuel 2001 [www.quakerinfo.com/fry.shtml](http://www.quakerinfo.com/fry.shtml)).

Samuel (2001:1) describes how Elizabeth Fry gave evidence to a House of Commons Committee on London Prisons in 1818, telling the committee how women slept thirty to a room in Newgate Prison, calling for prison reform and strongly condemning the death penalty. With prison overcrowding remaining a consistent problem, transportation to Australia became a favoured option available under British law. Sweeney (1981:38) recounts how Fry and her fellow prison reformers were present as the transport ships left England for Australia, providing a gift for each women prisoner:

For female prisoners there were small gifts by the 1800's, given by Elizabeth Fry, the prison reformer and her followers: combs, scissors, thimbles and spectacles.....and two small bags, one for clothes, the other for knitting.

In Western Australia the first purpose built structure to house prisoners was the Round House, Fremantle. Designed by HW Reveley, the colony's first civil engineer, and built in 1830/1831, the Round House had eight cells and a gaoler's residence, all of which opened up into a central courtyard (State Records Office 2004). Prior to its building, a prison 'hulk' was used as a temporary measure to house prisoners but there was difficulty in getting prisoners to and from the moored vessel<sup>17</sup>. Within 20 years the Round House was unable to meet the needs of the settlement with the State Records Office recording that 'when the first convicts arrived in 1850, the Round House was inadequate to house them' (State Records Office)<sup>18</sup>. As a result, 'the convicts built a new goal which was completed in the 1850's' (ibid).

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<sup>17</sup> The Marquis of Anglesea was wrecked off rocks in 1830 while sailing in a gale wind in Gage Roads, a deep water passage outside of Fremantle Harbour.

<sup>18</sup> See website [www.sro.wa.gov.au/collection/prison](http://www.sro.wa.gov.au/collection/prison)



According to the State Records Office, the convict workforce spread quickly throughout the colony through a series of Convict Establishment depots and the ticket-of-leave system for those prisoners who exhibited good behaviour. The depots were in North Fremantle, Freshwater Bay, Clarence, Guildford, and Greenmount. The Records indicate that there were also hiring stations where employers could hire ticket-of-leave labourers, located in Toodyay, York, Bunbury, King George's Sound, Mount Eliza, and Port Gregory. A ticket-of-leave was granted before the end of a prisoner's sentence and those permitted were freed to seek employment usually under a master, or to find work of their own, staying within the district where the leave was assigned to and with monthly reporting conditions to a local magistrate ([www.sro.wa.gov.au/collection/prison](http://www.sro.wa.gov.au/collection/prison)).

The first major act relating to prison administration in Western Australia was passed in 1849, providing the basis for the formal recognition of public prisons. Fremantle Prison opened in 1852 and operated as the State's major penal institution until its closure in 1991. In addition to this, smaller gaols were established to house those awaiting trial or those convicted of relatively minor crimes and serving short term sentences. Perth Gaol operated opposite Government House between 1830 and 1855 then reopened in Beaufort Street as a part of the Convict Establishment where it operated until it was closed in 1888, prisoners then being transferred to the new Fremantle Prison ([www.sro.wa.gov.au/collection/prison](http://www.sro.wa.gov.au/collection/prison)). In 1879 gaols were proclaimed at York, Newcastle (now Toodyay) Bunbury and Busselton (Thomas and Stewart 1978:10). Other prisons were opened at Roebourne in 1881, Derby 1887, Wyndham 1888, and at Carnarvon in 1890 (ibid).

Thomas and Stewart's (1978:52) accounts illustrate the miserable conditions in West Australian prisons and the chequered path of reform. The main issues relevant to this thesis are the concerns with the conditions for prisoners at Fremantle prison and the treatment of Aboriginal prisoners on Rottnest, leading to the Forrest Report<sup>19</sup> of 1884. Aboriginal prisoners were held in custody throughout the state's gaols following settlement, and many were sent to Rottnest Island which functioned as a 'native prison' from 1838 until it became a gaol in 1904, operating as part of Fremantle until its closure in 1932 (State Records Office website 2004: [www.sro.wa.gov.au/collection/prison](http://www.sro.wa.gov.au/collection/prison)).

The Royal Commission into the Penal System of the Colony convened during 1898/99 to examine the conditions of prison system and examine the use of punishment and remissions, prisoner classification, sanitary and health conditions and all contracts for the prison, reporting that there was 'concrete evidence of disease and filth in Fremantle and ... on Rottnest Island ( Thomas and Stewart 1978: 52).

Following the Royal Commission there were improvements in prison conditions and administration culminating in the Prisons Act 1904-3. Pardalup Prison was built in 1927 as a reformatory goal and, later, because of pressure to house prisoners other than at Fremantle prison, Barton's Mill was commissioned in 1942. During the 1960's the rise in prisoner numbers led to overcrowding, resulting in several initiatives to alleviate this problem. In particular, Geraldton's existing facility became a common gaol in 1964 and was expanded in 1967, the Kalgoorlie police lock-up was proclaimed a common gaol during the same year and Bandyup was opened as a prison for women in 1969 (Thomas and Stewart 1978:158).

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<sup>19</sup> Commission to inquire into the treatment of Aboriginal prisoners of the Crown and certain other matters.

### *Current Structure of prisons and their administration*

The Department of Justice is currently responsible for the management of West Australian prisons. In accordance with the Prisons Act and Director General's Rules, and through the Community and Juvenile Justice and Prisons Divisions, the Department oversees the assessment and placement of offenders in appropriate prisons or in community programmes for the duration of their sentences. At any one time, the Department of Justice is responsible for managing about 8,000 offenders; about 3,000 of these are in the State's 15 prisons and about 5,000 offenders are serving some type of order in the community ([www.justice.wa.gov.au/about prisons](http://www.justice.wa.gov.au/about_prisons)).

At the time of writing there are thirteen prisons, seven of which are metropolitan and six are regional. These prisons are divided along security<sup>20</sup> and gender lines and, although there are male and female prisoners on the same site in some regional prisons, there is strict segregation. There are no regional prisons solely dedicated for women prisoners. Acacia prison, although owned and monitored by the State Government, is operated by AIMS Corporation, a private contractor. Details of these prisons are on Table 5.

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<sup>20</sup> A prisoner designated with a lower security rating may be held in custody in a more secure facility.

Table 5 West Australian Prisons as at December 2004

Metropolitan Prisons

	Maximum Security	Medium Security	Minimum (Low)
Female	<b>Bandyup</b> Opened Jan 1970 Capacity <sup>21</sup> 164		<b>Boronia</b> Pre-release Centre Opened June 2004 70
Male	<b>Casuarina</b> Opened June 1991 Capacity 493  <b>Hakea Remand,</b> Receival and Assessment Prison Opened 2001 <sup>22</sup> Capacity 750	<b>Acacia</b> Opened May 2001 Capacity 750	<b>Wooroloo Prison</b> Farm Opened 1972 Capacity 232  <b>Karnet Prison</b> Farm Opened 1963 Capacity 172

Regional Prisons

	Maximum	Medium	Minimum
Male	<b>Albany Regional</b> Opened Sept 1966 Capacity 222	<b>Bunbury Regional</b> Opened 1971 Capacity 218 <sup>23</sup>	
Male and Female	<b>Eastern Goldfields</b> Opened 1968 Max to Min Capacity 96	<b>Broome Regional</b> Opened 1894-1942. Reopened 1945 Med to Minimum Capacity 89	<b>Roebourne</b> Opened 1984 Capacity 163  <b>Greenough</b> Opened 1984, upgraded 1990

Hakea prison is a men's remand and assessment prison with facilities to establish the needs of male prisoners as they first enter custody. Hakea also holds male remand

<sup>21</sup> All capacity figures quoted here are based on modified rather than original prisoner capacity. Bolt-on beds and double-ups cells have previously been used during over-crowding.

<sup>22</sup> Formally this was the site of Canning Vale Prison and the C.W.Campbell Remand Centre

<sup>23</sup> Includes short term maximum security

prisoners. While the Department of Justice recognises the need to separate remand from sentenced prisoners this has not always been achieved either in regional or metropolitan prisons. In addition, Bandyup women's prison does not have separate facilities for women held on remand.

The Department of Justice 2003 Annual Report notes that the cost of keeping a prisoner in custody has risen from \$192.53 per day in 2000/1 to \$255 per day during 2002/3 (Annual Report 2002/3:149-151). This compares with the actual cost of managing an offender in the community which, for the year 2002/03 was \$16.02 per day (Annual Report 2002/3:149-151).

### ***Investigating bodies and reports***

A combination of overcrowding, riots and a number of deaths in custody have meant that West Australia's prisons continue to be the subject of much debate and criticism. Following the call from activists and prisoner support services for greater accountability and transparency within prisons, the idea of an Inspectorate was presented in Parliament and, in 1999, the Office of the Inspector of Custodial Service was established by legislation. It became operational in January 2000 with the aim of bringing 'external scrutiny to the standards and operational practices in adult prisons (public and private) and to some other custodial services, particularly prisoner transport and court custody centres' (Annual Report 2000:3). The Office was also given the authority to conduct 'thematic reviews' of prison services. In 2003 the Inspector of Custodial Services Act 2003 replaced the earlier provisions in the Prisons Act and the Court Security and

Custodial Services Act 1999 and enabled the Inspectorate to conduct inspections of Juvenile Detention Centres. The Independent Prison Visitors Scheme and the Independent Detention Centre Visitors Scheme are managed by the Office.

As at September 2004, the Office had completed 16 prison inspections, two court custody centre inspections and a report on prisoner transport. Thematic reviews have been conducted into special management units, vulnerable and predatory prisoners, cognitive skills programmes, deaths in custody at Hakea Prison and a review of the security practices at the Supreme Court following the escape during 2004. The Office is independent of the Department of Justice, WA and reports directly to the West Australian Parliament.

In addition to the reports of the Inspectorate, there have been three major reports on the West Australian prison system within the last 20 years. These reports are:

- *Report of the Inquiry into the Fire and Riot at Fremantle Prison on the 4<sup>th</sup> January 1988* (McGivern: 1988)
- *Report of the Inquiry into an Incident at Casuarina Prison on 25<sup>th</sup> December 1998* (Smith: 1999)
- *Report on an Inquiry into Deaths in Prisons in Western Australia* (West Australian Ombudsman 2000)

The McGivern<sup>24</sup> Report (1998) found Fremantle Prison to be in poor physical condition, seriously overcrowded and with an ineffective administration. It reported that the appalling conditions, a less than humane environment and ineffective management were major factors contributing to the riot, fire and the hostage taking of 4<sup>th</sup> and 5<sup>th</sup> January 1988 (McGivern 1988:14). The substandard and overcrowded conditions included cells

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<sup>24</sup> McGivern had served as a prison officer and superintendent retiring from the prison service in 1996.

that were too small, infested by vermin, and which were the places where prisoners were ‘compelled to eat, sleep and defecate’ (ibid). The most common complaint among prisoners was the ‘selective and punitive attitudes of a few prison officers’ (ibid) with accounts of ill treatment by a small group of officers being frequent.

In its turn, the Smith Inquiry into the Casuarina Riot on 25<sup>th</sup> December 1998, found that ‘systemic neglect’, a ‘tinderbox situation’ and a final ‘spark’ produced the riot. The ‘tinderbox’ was attributed to ‘an overcrowded prison system manifesting various symptoms of staff and prisoner stress and decreased services to prisoners and failure to address the growing drug problem’ (Smith 1999:98-100). The ‘spark’ related to minimum control capability together with maximum conditions for disturbance, drug intoxication, confrontation and collective violence (Smith 1999:102-103). The Inquiry also named continuous changes at the senior prison management level and failure to account for prisoner growth as part of the system failure (Smith 1999:97).

The Ombudsman’s inquiry was brought about by the ‘disturbing upward trend of prison deaths in 1997’ with 12 people dying in West Australian prisons during 1997; the highest number of deaths in custody for 18 years (Ombudsman WA 2000:10). A number of events caused the investigation to be prolonged and the report delayed, including a marked increase in the number of complaints received from prisoners, the need to canvass prison chaplains and visitors for their views, the Casuarina Riot and additional deaths in custody (Ombudsman WA 2000:11).

Overall, the Report reiterated the failings identified by the Smith Report, commenting particularly on the inability of the Ministry (later to become the Department of Justice) to act on previous findings. The Ombudsman (2000:6) also noted that:

One of the strongest themes to have emerged from my inquiry is that the Ministry has always been able (sometimes with the help of recommendations made externally) to identify what has been needed to be done to improve our prison system. Where the Ministry has failed, in my opinion, is in its apparent inability over the years to move beyond the awareness and planning stages to the implementation and achievement stages.

One of the more particular concerns voiced in the Ombudsman's Report was related to the control and delivery of health services within the prison. On this the Ombudsman (2000:7) recommended that health services:

Should not lie with the Ministry – but, rather, should be placed in the hands of a new entity which is quite separate from the Ministry... which should be funded in its own right... to provide a health service within prisons that is equivalent... to health services in the community.

The Report also drew attention to significant shortcomings in the data, statistics and general information collected by the Ministry, and critically, it pointed to the focus on security at the expense of all else:

Prisons are hostile places and the past has shown us that achieving change within them is no easy task. It seems to me that security has considerations have always prevailed over all others in this State's prisons, and reasons can always be found for not implementing some new way of doing things or for delaying the change (Ombudsman, WA 2000:7)

### ***Rehabilitation of prisoners***

Policy makers contend that re-offending numbers could be reduced through a variety of new strategies and risk assessments to identify and manage prisoners following release. In recognising that Western Australia has a high rate of incarceration and re-offending, the then Attorney General and Minister for Justice, Jim McGinty's Report *Reducing Reoffending* (2002:5) argues that, 'There is no single solution that will reduce the rate of



offending. No single initiative, regardless of its proven effectiveness, will control crime on its own. Multiple interventions and policies are more effective’.

Subsequent to this report, a number of initiatives have been implemented. A cognitive skills programme was purchased under contract by the Department of Justice in 2000. This programme has two components, a reasoning and rehabilitation (R and R) component for prisoners and an interpersonal skills training programme (ISTP) for prison officers. While it was initially intended that the cognitive skills programme would be provided to all prisoners and officers within the state, beginning with officer training and the development of coaches, only a small number of coaches and trainers have been involved in its implementation to date. A report on the programme by the Office of the Inspector of Custodial Services (2004:23) also found that while its development was accompanied by ‘vision and enthusiasm’ there was also ‘failure to establish appropriate management structures (and) secure sufficient continuing resources’.

In addition to the cognitive skills programme, a number of crime specific programmes are available to particular prisoners during their sentence. Two of these programmes, the sex offenders’ treatment programme (SOTP), and the violent offenders’ treatment programme (VOTP), are cognitive-behaviour approaches. Professor David Greenberg undertook an analysis of the sex offender treatment programme. He argued for a stronger focus on psycho-pharmacological interventions, maintenance programmes and external controls. He also raised concerns over the lack of treatment notes and progress reports making quality audits impossible to perform:

Of most concern was the lack of treatment progress notes detailing the content of each treatment session provided and the offender's attendance, participation and integration of skills. Without such progress notes the program content, delivery and offender participation cannot be verified and process and program quality audits are not possible. Examination of the treated and untreated recidivism rates reveal there to be no significant effect of treatment. (Greenberg 2002:viii)

Another major initiative was the 2003 re-entry programme for prisoners exiting prison. This was designed to coordinate services for prisoners as they return to their families and community, increase treatment options for drug dependent offenders and provide treatment programs in both prison and community settings (McGinty 2002:12). Despite these ventures, the most recent Director's Report<sup>25</sup> (<http://www.justice.wa.gov.au>) acknowledges the continuation of the problem of high incarceration rates, particularly among Aboriginal offenders:

The past year has seen further reforms and success in continuing to address WA's disturbing imprisonment rate. Western Australia has traditionally imprisoned people at a higher rate than any other Australian State, aside from the Northern Territory...However, Western Australia continues to imprison indigenous Australians at a greater rate than any other State. This is an unacceptable situation, and throughout 2002/03, the Department initiated innovative programs to continue to address this critical issue.

### ***Prisoners' rights and advocacy groups***

For a number of reasons, it is difficult for prisoners to complain about their treatment and the Department of Justice has struggled to provide a sustainable grievance process. According to its Annual Report (2004:121), the grievance process is 'still being refined after two years of operation and has not been optimised as a prisoner management tool'. Complaints can also be made directly to the Ombudsman's Office or to an Independent

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<sup>25</sup> Director General of the Department of Justice, Mr Alan Piper.

Prison Visitor, although prisoners are advised to initially use the grievance process. The role of the Independent Prison Visitor precludes that of personal advocacy. Some prisoners have access to a Peer Support team composed of fellow prisoners who are there to listen and provide support. However, the support teams are excluded from many sections of the prison and their effectiveness is limited to the prisoners who provide the service and its management.

As far as advocacy is concerned, the situation in Western Australia is left in the main to chaplains, church social justice organisations and non-government organisations such as the Prison Reform Group of WA and the Deaths in Custody Watch Committee of WA as there are no structured independent advocacy services. Following the Casuarina prison riot it was members of these groups who protested about the 24 hour daily lock-down of prisoners over a period of eight months and who were also able to identify and provide evidence of systemic brutality within a small section of the prison service.

These groups may have some impact. The Deaths in Custody Watch Committee of Western Australia detailed the 'torture and brutalisation in Western Australian prisons' its submission to the United Nations in 2002 (DICWC Annual Report 2001:3) Within a month of this report the Office of the Inspector of Custodial Services made an unannounced inspection of the Induction and Orientation Unit and Special Handling Units of Casuarina Prison and reported critically on the 'confused objectives and organizational sclerosis' that underpinned a number of the problems there, particularly in the 'Head Office of the Department' (Report of an Unannounced Inspection of the

Induction and Orientation and Special Handling Units of Casuarina Prison: [www.custodialinspector.wa.gov.au](http://www.custodialinspector.wa.gov.au)). While this is promising, the Department of Justice does not have to implement the recommendations of the Office of the Inspector of Custodial Services and has not yet been required by Parliament to change structures and work practices.

The difficulty of monitoring practice and achieving good standards in prisons is increased because the Department of Justice uses the *Australian Standard Correctional Guidelines 1994* to guide and monitor prison conditions and practices. These Standards lack enforcement and safeguards, leaving prison authorities to act under their own scrutiny and in accordance with their own rules, thus reducing accountability and promoting closed workplace practices. These national standards fail to acknowledge international standards such as the *United Nations Standard Minimum Rules for the Treatment of Prisoners*, and the *Basic Principles for the Treatment of Prisoners* that are enforceable amongst signatories.

## **Summary**

The focus of this chapter has been on the individual departments and offices which form part of the criminal justice system. Garland's (1990:4) recognition that such structures are 'not unshakeable nor beyond challenge' and that they have the capacity to take on 'a quasi-independent life of their own' adds weight to the reflections of two recent inquiries, the *Royal Commission into Whether There Has Been Any Corrupt or Criminal Conduct by Western Australian Police Officers (2003)* and *The Inquiry into the Performance of the Department of Justice with regard to the Management of Offenders in Custody and in*

*the Community*<sup>26</sup>. In essence these inquiries have shown each department's inability to provide the government or community with the full integrity and accountability required of them, as reflected by adverse media coverage of services and calls by community, government, and prisoner advocacy groups<sup>27</sup> to investigate several responses to critical situations.

Much of what occurs within the system is accomplished behind closed doors and 'out of sight of the public' where 'state bureaucrats, officials and experts...deal with the matter according to an appropriate mix of humanitarian sentiment and rational argument'(Pratt 2002:32). The arguments reviewed in this chapter suggest that the political environment and institutional processes of the criminal justice system combine to render it unlikely that an individual will remain unscathed by their encounter. My main argument hinges on precisely this point. It is that the system has the power to impact on the self in such a way as to contribute to the creation of what Goffman (1963:14) describes as a 'blemished character' subjecting the offender well beyond their punitive sentence.

This chapter has described the manifold steps between arrest, conviction and post-release programs. My contention is the manner in which these steps are taken, and the ways in which a person is treated at each point of contact, will have an enduring impact on their sense of self, their chance of re-entering the community, and their future attitudes towards the criminal justice system. While my thesis mainly probes negative consequences and impacts, I also acknowledge that positive outcomes are possible. Positive examples of current practice include the problem solving and therapeutic courts

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<sup>26</sup> The Mahoney Inquiry 2005

<sup>27</sup> The Prison Reform Group of WA (Inc), the Deaths in Custody Watch Committee (Inc), and Church social justice committees.

such as the Perth Drug Court and the Geraldton Alternative Sentencing Regime now operating in Western Australia. These enable the system to reflect on how it can help to resolve the re-offending and aftermath of crime, rather than having a singular focus on who it should punish and how (Braithwaite 1989, Consedine 1991).

This chapter has indicated that Western Australia traditionally had, and continues to have, a heavy handed response to offending behaviour. The increasing prisoner population helps make the case for governments to expand the number of prisons and prison beds with the state overseeing the largest number of prisoners ever recorded within Western Australia ([www.justice.wa.gov.au/adultoffenders](http://www.justice.wa.gov.au/adultoffenders) Thursday's Prisoner Count, September Thirtieth, 2005). The reports of the Inspector of Custodial Services paint a picture of a system failing to provide adequate levels of service in areas such as health, prisoner transport, court security and programs.

As shown in this chapter, Western Australia's police and prison services have been, and continue to be, the subject of numerous reviews and reports. The importance of these inquiries is underlined by the fact that, without them, police and prison services generally operate with closed work practices and limited public scrutiny. Recently both services responded to criticism and recommendations for change by suggesting that they are already in the process of restructuring and reforming their services. The cyclical nature of inquiries with their recommendations for change and transformation, often followed by the return of departments to their previous culture, or at the best, inaction, signals the possibility that these organizations may continue to impact negatively on those subjected to them.

The numerous and complex processes which form part of the overall criminal justice system in Western Australia appear to be related and, as a total ‘apparatus’ they are. At the same time the management structure shows each department to be operating through silo type structures. Within such a structure, each area is independent of the other, with a Minister for Police, a Minister for Justice and an Attorney General, each with their own Department, and each with separate policies, mission, strategies and culture. In an Australian context, as Findlay et al (1994:235) point out, the system is ‘comprised of separate sub-systems, each with its own ideology and interests’. In the context of this thesis, this points to a culmination of uncoordinated responses to crime and punishment, undermining any capacity to decrease the negative personal impacts of surveillance and punishment.

Of specific interest to any study of the Western Australian criminal justice system is its impact upon the Aboriginal people. As of 30<sup>th</sup> June 2005, Aboriginal prisoners constituted 40.5% of the total prisoner population (WA Parole Board Report 2005:11). Given my focus on the way in which imprisonment and punishment affect a previous sense of self, this has profound implications for my thesis. While the material discussed later in this thesis shows that no two people tread the same path, it indicates that responses are patterned by variables such as ethnicity, class and gender. The popular association of Aboriginality with crime and imprisonment is lived out, in a material sense, in official statistics and the composition of our prisons. This situation, as numerous other researchers (Blagg 1998, Anleu 1996, Findlay et al 1994) have shown, has the

capacity to set that culture apart and re-enforce profound feelings of alienation and despair.

Other groups of people who experience the 'rough end' of justice, include those who are impoverished, homeless, unemployed, and those with the kind of mental or physical dysfunction that can lead to anti-social behaviour. The question for this thesis is how the feelings of marginalisation, associated with these conditions are amplified within the criminal justice system, to a point which the individual, either more or less withdraws, or, alternatively, seeks revenge on a system perceived to be punitive and uncaring.

Although social exclusion is widely recognised to contribute to crime and re-offending, (see, for example the British Social Exclusion Unit's website: [www.socialexclusionunit.gov.uk](http://www.socialexclusionunit.gov.uk) and the Minister for Justice's report *Reducing Reoffending* 2002), it is given a low priority in the face of calls to be tough on crime. It is important to take seriously the words of the Department of Justice itself:

... many prisoners re-offend because they lack support systems. Many lose their housing and income, and relationships have broken down, during their time in prison. In addition, many are poorly educated and have few skills to gain work. As a result, many ex-offenders fall back into the cycle of crime. (Factors leading to repeat crime: <http://www.justice.wa.gov.au>)

The impact of these factors on those who participated in this research is fully discussed in Chapters Five, Six and Seven. Before I deal with my own study, I turn to the insights of a number of recognised theorists concerned with punishment, society and the individual.



## CHAPTER 3

### The self and the criminal justice system: theoretical reflections

*I saw myself waving and blowing kisses in the air as I was led away from  
the ugly scene of the court, to the ugly scene of the prison wall, where it  
was ugliness, all the same.*

*I saw myself standing at the cell door where looking out or looking in was  
the same, for it was all inside, no place to hide, and in there, well yeah,  
everywhere was the same.*

*I saw myself walking free, going to where I ought to belong, but it had been  
too long and everywhere looked the same, with the very same game that I  
played, before it all looked the same.*

*I never saw myself like that again, never again.*

BS'93

This chapter provides a theoretical foundation for exploring the central question of the thesis, namely, the effect upon the self of 'being found guilty' within the criminal justice system. Here the work of Goffman and allied authors is used to consider processes such as arrest and interrogation, court proceedings, sentencing and punishment, as well as the stigma associated with public proceedings and the determination of guilt. Drawing on Goffman's *Asylums* (1971), the focus turns to prisons as total institutions followed with a brief consideration of Foucault's (1977) insights into surveillance and discipline.

#### **Theoretical foundation: The socially constructed self**

Psychologists and psychoanalysts have a vested interest in understanding and delineating the self. Their considerations however, vary widely. For Rogers (1961) the self is a positive and free organism motivated towards self actualisation by a self concept constructed through interaction with others, whereas for Maslow (1970) the self has a series of needs which can only be met in a progressive and hierarchical manner. Freud's psychoanalytical framework suggests that the self has varying levels of consciousness, whereas for Skinner (1947:225) the self is an organism without free will, responsive only

to its surrounding environment. In contrast to these essentially 'inward' looking notions of the self, writers such as Goffman, Blumer and Cooley are used, all of whom centre on the socially constructed self.

### *Symbolic interactionism*

Symbolic interactionism suggests that humans 'act towards things on the basis of the meanings that these things have for them', and that such meanings come from social interaction and are 'modified through an interpretive process' (Blumer 1969:2). For symbolic interactionists meanings are a social product; 'creations that are formed in and through the defining activities of people as they interact' (Blumer 1969:5). Thus the notion of oneself is as an object viewed, interpreted and given meaning 'from the process of social interaction in which other people are defining a person to himself [sic]' (Blumer 1969:12). The self, however, does more than simply respond to others as it makes 'indications to itself and [responds] to such indications' and generally deals with the world around itself through interaction and interpretation (Blumer 1966:14).

Early notions of the socially constructed self can be found in the work of Adam Smith who suggested that 'with the eyes of other people social actors scrutinize the propriety of [their] own conduct' (Smith 1982:112 cited in Barbalet 2001:121). It was Cooley (1964) who was to give this its contemporary sociological foundation when he described the 'looking glass self' as the image that arises when we look at ourselves from the imagined perspective of the other, making ourselves available as an object that the other sees and gives meaning to:

As we see our faces, figures and dress in the glass and are interested in them because they are ours, and pleased or otherwise with them according as they do or do not answer to what we should like them to be, so in imagination we perceive in another's mind some thought of our appearance, manners, aims, deeds, character, friends, and so on, and are variously affected by it (1964:184).

For Goffman, a full understanding of the self calls for consideration of how that self resides in the arrangements prevailing in a given social system. In this sense the self is:

...not a property of the person to whom it is attributed, but dwells rather in the pattern of social control that is exerted in connection with the person by himself [sic] and those around him. This special kind of institutional arrangement *does not so much support the self as constitute it* (1961:168 author's emphasis).

Goffman (1963:12) suggests that social identity is made up of personal attributes and social categories and illustrates how, in the construction of the social self, the observer or other 'transforms the person's category and attributes, into normative expectations, into righteously presented demands'. Reflecting upon how it is seen by others, the self sees itself in either positive or negative terms. Thus Barbalet (2001:121), in his account of shame and its impact upon the self, suggests that shame is 'a negative social perception of one's self, the seeing of one's self from the standpoint of others'. It is this notion that is specifically addressed within labelling theory, where Tannenbaum (cited in Braithwaite 1989:16) refers to the self 'becoming the thing he [sic] is described as being'.

### **Goffman and dramaturgical performance**

Goffman's work *The Presentation of Self in Everyday Life* provides a 'sociological perspective from which life can be studied' (Goffman 1971:9). From this perspective, the person engaged in everyday activities presents a character 'tailored to the parts played by the others present' (ibid). Goffman's text provides an understanding of the self as being imputed within a performed character, a product of a whole scene rather than the

‘creator’ of it. For Goffman (1971:245), the self as a performed character has ‘...a dramatic effect arising diffusely from a scene that is presented, and the characteristic issue, the crucial concern, is whether it will be credited or discredited’. The self, in Goffman’s terms, is a product of staging the character, the total performance including props and the front and back regions of the stage. It emerges from scenes where the performed character plays, and from the audience, the others on stage whose ‘interpretive activity will be necessary for this emergence’ (ibid). Goffman (1971:77) suggests further that there are two types of behaviour; the real, sincere and honest performance, and the false or insincere performance that ‘fabricators assemble before us’, referring to the ‘con-men’ [sic] or tricksters. He also points out that, ‘if a performance is to come off, the witnesses by and large must be able to believe that the performers are sincere’ (ibid). He also suggests that when the individual doubts the act he or she performs, and has ‘no ultimate concern’ for the audience, the person can be described as cynical as he or she ‘may delude his [sic] audience for what he considers is their own good’(Goffman 1971:29). This can lead to the actor becoming ‘fully taken in by his own act’ (Goffman 1971:28). It is possible that those experiencing arrest, conviction and sentencing – particularly if they have been through the process a number of times before – promote this kind of cynicism, with the actors becoming ‘fully taken in’ by their own scripts in some instances.

Drawing from Goffman’s insights, the participants’ journeys are described through the criminal justice system as a series of performances divided into several scenes. Each

scene has its director, props, stage and promotions manager and is performed through an adversarial script where characters are opposed to each other.

### *Actors and their performance*

In our daily presentation of self to others, Goffman (1971:244) stresses that the ‘very structure of the self can be seen in terms of how we arrange for such performances in our ...society’. He sees the individual as both performer and character, a ‘harried fabricator of impressions’, and as a ‘character, a figure...whose spirit, strength and other sterling qualities the performance was designed to evoke’.

There are various actors who appear in each scene as the accused person makes his or her way through the criminal justice system. As well as taking the role of the ‘accused’ the subject may also become the ‘convicted’, the ‘prisoner’ and ‘parolee’. Distinct roles are vested in those who have power over the subject. These include the police, prison and/or parole officers, court officials, and in some instances, family members and media personnel.

Goffman (1971:212) reminds us that in preparing for a performance, ‘it will be useful if the members of the team exercise foresight and design in determining in advance how to best to stage a show’. However, in relation to the various performances in the criminal justice system - arrest, conviction, sentencing and so forth – these scenes are so well entrenched that little or no formal preparation is needed, at least among those who play the official roles (the police, court officials, judges) for their script is already substantially written in both a formal and informal sense. However, a period of intense preparation or

‘impression management’ is indeed likely to be undertaken by the accused person (eg. how to dress for court, the kind of demeanour to present and responses to provide), often taken under legal tutelage.

Goffman’s work makes clear that each scene has to be performed in public if humiliation and shame are to be maximised. When the subject is hidden from view, he or she will not be in the gaze of others, and not reflect upon how the self is viewed from a public perspective. Justice officials know that in making the scene public – for ‘public interest’s’ sake – will bring the subject into the spotlight, in a way in which he or she will be humiliated, stigmatised and shamed.

Goffman (1971:78) claims that ‘almost anyone can quickly learn a script well enough to give a charitable audience some sense of realness’. Within the criminal justice system the officials have an actual, formal script available to them with set words and phrases, warnings and injunctions that are used for formal services. For example at the arrest a formal ‘caution’ will be read by the arresting officer, while in the court the magistrate will formally read the charge and ask the accused person how they intend to plead. In contrast, the script available to the accused person has to be adjusted to individual circumstances. This degree of latitude, however, also provides the space whereby the subject can be judged on the words spoken and the demeanour presented. The accused person is highly visible; subject to scrutiny and, with his or her ‘power to speak’, a source of vulnerability. In contrast, the ‘self’ behind the judge, lawyer or member of the police or prison service is hidden.

Goffman divides performances into two regions; the front region where an individual's activity 'maintains and embodies certain standards' for example, *politeness*, and *decorum* (1971:110), whereas the back region is defined as 'a place relative to a given performance, where the impression fostered by the performance is knowingly contradicted as a matter of course' (1971:114). According to Goffman (1971:28), 'when an individual plays a part he [sic] implicitly requests his observers to take seriously the impression that is fostered before them'. In contrast, at back stage the performer 'can relax; he [sic] can drop his front, forgo speaking his lines, and step out of character' (Goffman 1971:115). This distinction is useful in throwing light on the various activities that may take place at the time of arrest, at the police station, in court and in prison.

At the site of an arrest, front stage activities take place where the arresting officer provides the audience with evidence of what Goffman (1971:112) calls 'make-work' whereby he or she is seen to be working hard, taking notes, asking questions, giving orders, while embracing a level of decorum that includes not overreacting or inflicting unnecessary injury. The back stage performance, out of sight, may be the opposite, whereby the arrested person may be shouted at, pushed down into a car seat or the back of a van, and where the officers arrive back at the police station and engage in derogatory comments about the arrested person.

Similarly at the police station, front stage activities take place at the public counter where the business of work activity is displayed, demonstrating to the public that the officers are under pressure to perform their long list of duties. Names are taken, photographs of

missing and wanted persons are displayed and files are stacked on desks. Back stage, near the holding cell, informal questioning may occur, a cigarette offered to the arrested person and some loose chatter engaged in.

Front stage activities for the court include the limited and controlled performance of the official court scene, where the accused will work with well rehearsed and standard cues to give the impression they are a good person, and that they are honest, respectful and hard working. Here they will play out the advice given them by their lawyer to act with decorum, to give the impression that they not of a kind to commit criminal acts, or that what occurred was out of character for them. Behind this there are back stage conversations and activities whereby subjects and lawyers prepare responses to the most likely questions that will be asked in the courtroom, discuss what criminal activity actually took place, how much damage occurred to the victim or property, what punishment to expect and what witnesses may be able to offer in the way of alibis.

The prison, as a total institution embodying all aspects of a prisoner's life, requires participation in numerous front stage activities. These include arrival, daily parades in the units, requirements for work, family visits, medical appointments, meetings with all persons in authority and appointments with an official visitor or the medical officer. Thus on family visits, prisoners need to present as clean and tidy, respectful of family members and possessing a good family relationship, as all these improve release prospects. Crucially, front-stage activities also include the interactions with other prisoners where it is important to present an image of toughness, strength and of being 'staunch'. Because



of the high level of surveillance within the prison, back stage activities are strictly limited and may not even be entirely entertained within the privacy of a solitary cell. But some degree of back stage work, in Goffman's (1971:114) sense of 'a place relative to a given performance where the impression fostered by the performance is knowingly contradicted as a matter of course' may indeed take place among prisoners. These include activities such as trading in prison knowledge or gossip, and producing weapons such as blades and other contraband carried out in places such as the sports oval, the back of a classroom, a toilet or shower block. Back-stage can also be a conversation in the chapel with a chaplain where the pressures of prison life can be discussed.

There are, however, occasions where front-stage and back-stage activities may be fused within any given situation, presenting a less distinct demarcation between the two than Goffman infers. When prisoners meet together to discuss mutual concerns or when support is offered to a fellow prisoner during a return to the cell-block following a period of solitary detention, for example, there may be a fusion of front and back-stage behaviour where the norms governing prisoner-to-prisoner relations are upheld but there is also a more personalised form of exchange and support, with activities deliberately out of the spot-light. It is against these notions of the looking glass self and its performative nature that I now turn my attention to the subject of stigma, punishment and surveillance. In the following sections I draw upon my personal experiences, and present these in text boxes at the beginning of each section.

## Stigma and degradation

From the day of my arrest I was treated as though I was guilty. There was no caution that I remember, as two police officers drove me to the police station. They were polite, enquiring and explained to me what was required of me. Despite my requests there were no tapes and no video recording of my interrogation, just notes that later wrongly read as though I had confessed to the crime. I was then formally charged. I pleaded my innocence and yet my fingerprints, photograph and DNA sample were taken. A charge sheet and file were made up providing me with a charge number, and a summons to appear in court a week later. The police Public Relations department did the rest, ensuring that I was labelled as the accused, the charged, the person held responsible by the police. The day after my arrest I read in the West Australian Newspaper that I was a person alleged to have committed a crime. My name and suburb gave enough information for me to be identified. My family and friends were horrified that the word 'alleged' enabled a full 'story' to be written about me. A week later I faced court again, this time as the defendant, and twelve months later I entered prison as a prisoner, criminal and convict.

Goffman (1963:12) suggests that when the person before us is seen by us as 'different from others...and of a less desirable kind' that he/she becomes less to us compared to others and is 'reduced ...from a whole and usual person to a tainted, discounted one'. This brings about 'stigma, especially when its discrediting effect is very extensive'.

Goffman refers to three types of stigma. These relate to personal deformity, blemishes of individual character and the 'tribal stigma of race, nation, and religion' (1963:14). For the purpose of this study my focus is on blemishes of individual character. Goffman suggests that inferior or blemished persons are believed to be possessed of a trait that can 'obtrude itself upon attention' therefore making the person 'not quite normal' (ibid). On this assumption we 'exercise a variety of discriminations' to observe and explain the person's inferiority and account for the danger he/she represents, thus reducing their life's chances (ibid). In essence, the stigmatised person is, 'disqualified from full social acceptance' (Goffman 1963:9). Descriptions such as 'criminal', 'convict', 'dangerous', and 'accused' are given to subjects throughout each process of the criminal justice system, resulting in 'blemishes of individual character' (Goffman 1963:14). For the accused person, these can

take on an enduring character, in both an informal and formal sense, which cannot be wiped out after the sentence has run its course. What the work of authors such as Cooley, Blumer and Goffman demonstrates above all is that these ascriptions are likely to be internalised by the subject, reflected in the imaginary gaze of the others, even in those who have no knowledge of the conviction. Seeing one's self in a good light, in this context, becomes precarious and provisional in so far as it is contingent on others not knowing the person's previous history. In fact, the imputation of guilt, and the reminder of the previous conviction, may be officially indelible when, for example, there is a requirement that the person has a police clearance certificate. Garland reminds us that 'the lawbreaker is incapacitated but also excommunicated' (cited in the foreword to Brown and Wilkie 2002: v).

Goffman (1963:12) makes a distinction between a person's 'virtual' identity when they present as a stranger before us and when we gain further information about him or her that leads to their 'actual identity'. Further, he suggests that a 'discrepancy may exist between an individual's virtual and actual identity' as we 'anticipate his [sic] category and attributes'. This discrepancy may come about as further information is gathered that shows 'his possessing an attribute that makes him different...a person who is bad, or dangerous', reducing him or her 'to a tainted, discounted one' (ibid). Goffman confirms that we readily assume or expect a person to have the identity we create for them, and we will use this until otherwise informed. It also bears upon the way that we then treat the person before us as our expectations become 'righteously presented demands' (1963:13). We are able thereafter to re-classify a person 'from one socially anticipated category to a

different but equally anticipated one' (ibid). When negative evidence becomes known or his or her identity apparent, this 'spoils his [sic] social identity: it has the effect of cutting him off from society and from himself so that he stands a discredited person facing an unaccepting world' (Goffman 1963:31). The re-classification not only allows us to discredit the person, but to use this as a compelling reason not to engage with them, and further excluded them.

The production of stigma may be accorded a social occasion of its own, the police line-up being an example (Goffman 1963:90) as the accused stands along with other people whose identities also remain unknown. Each person in the line-up is given the virtual identity of being a possible suspect by the victim and police. Standing in the line-up as a citizen, one is still viewed as having a possible re-classification as the accused.

The blemished character, by virtue of being designated 'blemished', is often unable to hide as there are people whose function it is to 'check up on the possible presence of the ill-reputed' (Goffman 1963:90). In the case of persons with convictions, this is exemplified by the presence of numerous officials and by regulations relating to employment, international travel and applications for a bank loan or insurance. On this, Goffman (1963:94) makes the point that even when an individual 'could keep an unapparent stigma secret' the person will find 'nearly all matters which are very secret are still known to someone, and hence cast a shadow'.

### *Degradation ceremonies*

The social curtailment and inner experience of ‘blemished person’ does not happen randomly or accidentally. Rather it occurs through a series of purposeful acts and transition points. On this, Goffman (1968:24) refers particularly to the ‘series of abasements, degradations, humiliations, and profanations of the self’ through which the self is ‘systemically, if often unintentionally, mortified’ that occur within the total institution. He also argues that ‘the processes by which a person’s self is mortified’ are fairly standard (ibid).

As far as prison is concerned, these ‘standard’ mortifications include orders to the prisoners to shower, stand naked, lift a leg, breast or scrotum, part the buttocks and open all body cavities. And, as Goffman (1968:18) comments, orders such as these, and exposure of the body, represents ‘...a leaving off and a taking on, with the midpoint marked by physical nakedness’. In addition, such actions can become horrifying reminders of histories of previous abuse<sup>28</sup>. It is through degradations such as these that a prisoner enters an environment that schedules a different sense of self with new roles and forced relationships, embedded exclusively around the role of prisoner and inmate. This contrasts with civil life as:

In civil life, the sequential scheduling of the individual’s roles, both in the life cycle and in the repeated daily round, ensures that no one role he plays will block his performance and ties in another. In total institutions, in contrast, membership

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<sup>28</sup> Goulding 2004, *Severed Connections*. This report indicated that 81% of the women in prison who participated in the study had suffered previous abuse.

A Department of Justice brochure indicates ‘a widespread incidence of past abuse (77%) or abuse as a child (57%)’ among women in prison (Department of Justice, 2002).

automatically disrupts role scheduling, since the inmate's separation from the wider world lasts around the clock and may continue for many years (Goffman 1968:24)

The 'milieu of personal failure in which one's fall from grace is continuously pressed home' begins within the stripping processes that ensure the prisoner recognises the low status and position they hold, in contrast to the normal rights and privileges of the outside world (Goffman 1968:66). Goffman also notes how these processes 'strip the [person] of his past supports' while preparing him or her for the house rules with their clearly defined rewards and punishments (1968:51). Thus the stripping intensifies the mortification process because the individual loses the very things that were previously part of their everyday life. This may include what clothes to wear, who to speak with, and who to phone, where to walk and with whom to recreate. Additionally, in episodes such as a cell search, letters and other personal and treasured items may be removed and photographs or pictures taken down from walls and either destroyed or placed in the 'property'.

As well as these degradation processes there is also a process of 'stripping' by prisoners or fellow inmates. This occurs within the framework of symbols and status that are a part of the system whereby inmates 'form and recognise symbols of prestige and disgrace' (Goffman 1963:32). Within the rating scale, prisoners at the low end of the scale are stripped of the entitlement to move freely among other prisoners, to eat, sleep and recreate among them. Generally speaking, long-termers hold greater status than short-termers and being young often holds less status than being old. Underpinning this is the disgrace of particular crimes that lowers status regardless of age or number of times spent in prison. Paedophiles are at the lowest end of the scale and are stripped of all

opportunities to engage in the general prison population by other inmates and, subsequently, by management.

The ranking process for prisoners starts from the time that a newly convicted person first enters the presence of others. They are then accorded a value of disgrace or prestige and are treated for the rest of their term in prison according to this judgement. Degraded prisoners face further humiliation by fellow prisoners who shout abuse, call them names such as 'tamp' 'rock-spider' and 'kiddie-fiddler', and wherever and whenever possible, further degrade them by urinating in their drinks and spitting in their food. The process of marginalisation, in the name of protection, is further entrenched when management restrict the access of vulnerable prisoners to places such as the oval, education unit and various industrial workshops. This exclusion continues in the prison workshops where prisoners in well paid work or prestigious positions can maintain their own status at the cost of others by removing competition for jobs through threats to prisoners with lower status or by advancing a harmful rumour about their conviction.

Goffman writes that total institutions 'are fateful for the inmate's civilian life' (1963:50). This insight can be extended to the 'search and arrest' process in a public place where an individual is not only questioned but may have to remove items from their person, have possessions searched, their body patted down and have their cars searched for contraband and roadworthiness or removed for forensic tests. They may also have to agree to provide a urine or blood sample or face further charges. They may be escorted back to their family home to witness intimate items scattered around the room for all to see or to their

place of work where items such as computer, desks and drawers may be checked in front of co-workers.

## **Punishment**

When I was sentenced the judge appeared to go to extraordinary lengths to draw attention to my previous high social standing and work among the local community, my previous high regard among peers, and my attitude during the trial. A sentence was imposed that was to keep me in prison for nearly three years, with another two years of parole and reporting conditions. This sentence immediately changed my life from moving freely around the community without any restrictions, to being incarcerated in a maximum security prison. My lawyers argued that a non-custodial sentence ought to be imposed as I was no threat, that I had complied with reporting conditions during the twelve months leading to the trial, and that I had not had a previous conviction. This was only the beginning of my punishment. This was the state's response to me. What followed was the prison's, and later, society's response.

I found that prison had its own 'just deserts' culture, providing space and opportunity for further punishment, sometimes regulated, sometimes vindictive, at times applied by officers, other times by peers. I was often denied a bar of soap or a razor, not allowed to go outside of the unit to the gym equipment, not called on time for a visit, and denied access to medical treatment. Refusing me a telephone call to my family was a favourite<sup>29</sup>. On two occasions I witnessed the boot from an officer strike the face of fellow prisoners as they were held on the ground, and witnessed men being pulled along by their hair or feet as they were chained and cuffed.

Soon after my release I felt my continuing exclusion by and from the community. This included being prevented from returning to play a leading role in a political party and within the church. My insurance company pushed me for further details regarding my conviction, and, in an interview for employment benefits, staff markedly changed their attitude once they heard of my conviction.

At a meeting I attended at the Department of Justice to discuss a cognitive skills programme, I was introduced to an international visitor by the Director of Prisons as an ex-prisoner, and during the discussion that followed, the visitor began to tell the group how convicts could be categorised and how they differed from ordinary people. In this and similar circumstances I felt as though I was devalued as a person and still being punished for the crime.

Each step of my journey today is made in the knowledge that I cannot obtain a police clearance and that there is a collection of reports and data from police and prison services that can find their way into the public domain at any time as a tool of control and punishment.

Garland (1990:16) describes punishment as a 'complex set of interlinked processes and institutions rather than a uniform object or event'. For Pratt it goes well beyond being convicted since, 'you will carry the consequences of your conviction with you always – and rest assured that, although you might like to forget about it, the state itself will never

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<sup>29</sup> During my term of imprisonment, prisoners were entitled to two phone calls per week only if they had not received a visit. This was changed when prisoner rights groups lobbied for more freedom to contact families.



let you' (1993: 393). Both Garland and Pratt's notions of punishment highlight that punishment is state sanctioned and institutionalised and at that it carries far reaching personal consequences. In the following discussion, I focus on the state sanctioned, legitimate process of punishment and the subjective consequences.

Findlay et al suggest that the moment of arrest presents the first opportunity 'to impose punishment without trial' (1994:207) and include summary justice measures, infringement notices and cautions. The immediate response for 'resisting arrest' can include being held, pushed, and thrown to the ground prior to being handcuffed. It may also include being sprayed in the face and body with 'mace' or being hit with a baton. The punishments that occur at this stage also include the humiliation of being searched and arrested in a public place or, conversely, in a family home where it is threatening not only to the subject but also to children and other family members. There is also the matter of being taken away in a 'paddy wagon' in front of friends, family or associates.

The court process itself offers a degree of punishment especially to first time offenders through stigmatic shame. In court the individual is named, the nature of their crime stated publicly and they stand before the court accused and, in many instances, ready to be sentenced. The court provides a level of anxiety and apprehension to the accused person and their family and, by inference, attendance at court gives an impression of a 'blemished character'.

In the court, at the point of sentence, punishment can take the form of a custodial or non-custodial sentence or a fine, community supervision order or a mix of these. A custodial sentence may be suspended for a set period of time in which the convicted person is required to obey the law and comply with court and community corrections orders. According to Findlay et al (1994:203), alternative sentences ‘usually imply a disposition which avoids or replaces imprisonment’ although offenders may eventually end up in prison as a ‘consequence of default situations’ that link the alternative sentence to prison. If a person fails to meet the performance standards required of a community-based or an intensive supervision order they face being breached and returned to court for re-sentencing. Failure to comply with a work and development order can lead to ‘...imprisonment to serve the balance of the unpaid fine in default’ (*Work and Development Orders*, Department of Justice, 2004:2).

Whilst Findlay et al, (1994) discuss a range of sentencing options including fines, community work, compensation and imprisonment, they fail to present the record of conviction as punishment in its own right. I argue that a record of conviction evokes consequences beyond the initial court actions of denouncing, shaming, and the various other sentencing options, for it maintains the full weight of punishment. While a sentence expires, a record of the conviction for serious crime remains as a part of the individual’s police identification, a part of the identity of the blemished character and something that becomes indelible upon the person.

A conviction in Western Australia not only redefines one's citizenship rights it continually defines the person as criminal, being forever guilty and as a person who in the community's eyes 'may strike again' (Garland cited in Bottoms and Tonry 2002:14). In this light, a conviction has the capacity to change the way in which the convicted person thinks about his or herself and how they presents to others. Thus, holding a conviction can be experienced as a personal diminishment, a scar on the image of the self that is experienced by the holder.

### ***Imprisonment as punishment***

Duff and Garland (1994:33) suggest that 'the emergence of imprisonment as the characteristic penal sanction in modern society can be explained by the prison's role in a wider network of disciplinary institutions and practices designed to govern individuals for a variety of purposes'. Similarly, Mathiesen (cited in Duff & Garland 1994:32) suggests that the reliance on imprisonment as a sanction stems, in part, from the hidden social functions of the prison. These include its expurgatory, symbolic, diversionary and political functions. Its expurgatory function lies in the capacity of prison to remove unproductive and disruptive people from the community while its symbolic function lies in its capacity to stigmatise criminality, defining and distancing inmates from the rest of the community. In a diversionary sense, the prison keeps a focus on crime and the ordinary criminal whilst diverting the gaze away from the harm being done by more powerful members of society. And, in a political sense, imprisonment provides a level of reassurance to the community that something is being done about crime, notwithstanding 'the very limited penological efficacy of imprisonment' (Duff & Garland 1994:33). In

essence the 'success' of prisons lies in their ability to ensure that its subjects will return to its walls, thus ensuring its continued existence (Garland 1990:149).

Regardless of the official emphasis on retribution, deterrence, rehabilitation or community protection, there appears to be a lack of consistency and direction. On this, Duff and Garland claim that, 'guiding philosophies for punishment rarely possess the singularity of logic or principle which might guarantee long-term administrative commitment' (1994:192). In Garland's view at least, our culture now stresses 'control, closure, confinement, and condemnation' since the 'continued enjoyment of market-based personal freedoms has come to depend upon the close control of excluded groups who can not be trusted to enjoy these freedoms' (2001:198).

Demands that governments should 'crack down' on offenders are reproduced in the 'tough on crime' discourse and translated into harsher penalties, comprehensive and punitive community reporting, and stringent release plans. In an examination of international responses to crime, and the move from more to less tolerance of violent crime, Pratt comments that, 'in a short time, then, we move from risk-free societies where dangerousness was in retreat to those where the risks posed by dangerous offenders are once again central penal issues' (1997:137). This has led to what Garland claims is:

A kind of retaliatory law making, acting out the punitive urges and controlling anxieties of expressive justice. Its chief aims are to assuage popular outrage, reassure the public, and restore the credibility of the system, all of which are political rather than penological concerns.

In terms of punitive regimes, the prison is the state's most severe form. As already indicated, it operates as a 'total institution' (Goffman, 1968), a concept to which I now turn in more detail.

### *The prison as a total institution*

I arrived at Casuarina Maximum Security Prison in 1992, less than twelve months after it had opened. My escort (two officers) held the radio and my paperwork and one spoke to the control unit by radio to ask if we could enter the Unit. There were six units each housing up to fifty prisoners on the campus style prison grounds. The door opened and I was escorted to the right, up the stairs along the landing (called wings) and shown my cell. Below was another wing, as well as another two the other side of the control room. Each wing housed up to twelve prisoners prior to 'double-ups' being fitted out. My solid steel cell door had a glass viewing panel that could be opened or closed from the outside by an officer. Cameras near the control unit focussed on each landing and the general area. We were all visible through the lens until 'lock-down' or when in our cells or the common shower block.

Reports were written, behaviour patterns were recorded and every letter to and from me was read and notes made of them. All telephone calls could be monitored. Names of visitors, my closest fellow prisoners, where I spent my time during the day, and extra activities I engaged in such as Tai Chi, meditation, educational studies and reading were all noted. My cell was the subject of a random or special search at any time, and this was used as an opportunity to closely examine (and throw upon the floor) any of my personal effects, photos, cards, letters, educational books, private journal and poetry, as well as look for contraband.

After a year I was moved to Canning Vale Prison and the following year I was able to view the surveillance technology as I had to clean around the offices, control rooms and security areas. It was also here that I first encountered 'dogs', prisoners 'giving up' on fellow prisoners by providing details of illegal activities for the extra privileges that it could bring. I almost lost my right to home-leaves due to a person disclosing some of my dubious activities (having special cakes made, writing other prisoners parole application forms for them, and completing their programme homework or obtaining personal information for a prisoner). The age old trade in prison secrets was encouraged by staff, with its currency for 'dogs' being leniency or a blind-eye.

Goffman describes the central feature of a total institution as a 'breakdown of the barriers ordinarily separating...three spheres of life' so that the inmate sleeps, recreates and work in the same place, under the 'same single authority' (1968:17). Once segregated from family, friends and community, the inmate's daily activities are 'carried on in the immediate company of a large batch of others' (ibid). Within the prison, such groups are typically units or blocks and wings such as Unit Four C, or Self-care Unit B wing. This arrangement of prisoners gives way to another key feature of the total institution namely

the ability to control in 'blocks' under the supervision of 'personnel whose chief activity...is surveillance' (1968:18).

Goffman observes that within a total institution the 'days activities are tightly scheduled', and managed by 'formal rulings and a body of officials, under a plan to 'fulfil the official aims of the institution' (1968:18). In current terminology, this is called 'a structured day' whereby the prisoner has set times for work, recreation, and a long period 'in-cell' and where little or no deviation is permitted. Such planning is designed 'for the security and good order of the prison', which in Western Australia now stands as the overriding rationale for prison management, taking precedence over all other considerations.

Prisons clearly embody Goffman's 'split' between the group who are to be managed and supervisory staff, where each group 'tends to conceive the other in terms of narrow hostile stereotypes' and where supervisory staff 'tend to feel superior and righteous' (1968:18). The prison as a total institution removes previously held social roles, including those of mother, father, son or daughter. Goffman suggests that while some roles may be able to be re-established upon release, 'it is plain that other losses are irrevocable and may be painfully experienced as such' (1968:25). At this level, the total institution is the 'barrier that separates him [sic] from the outside world' (ibid). While Goffman's work provides the basis for all subsequent research within this study on the prison as a total institution, insights into the prison's capacity for surveillance – and the disciplinary patterns embodied therein – come from a different theoretical tradition; the work of

Foucault. No discussion of the prison as a disciplinary mechanism would be complete without consideration of his insights. I therefore turn, briefly, to his work.

### **Foucault and Surveillance**

Foucault's classic exposition of Bentham's panopticon of the early 19th century illustrates the modern approach to surveillance which embodies a central guard-post for observation and open cells rendering all prisoners visible. Foucault's central point is that, because of the direction of the light, prisoners can never be sure whether or not they are being observed. They stand illuminated in their cells while they cannot similarly gaze back on the guard. This means that they must at all times behave as though they are under observation. As a consequence, they learn to internalise discipline to become, in essence, 'their own guard' rendering discipline total. In this way, Bentham's design enabled the control and discipline of the many by the few using light and visibility to control inmates, rather than darkness and isolation. The new technology thus 'reverses the principle of the dungeon; or rather of its three functions – to enclose, to deprive of light and to hide – it preserves only the first....visibility is a trap' (Foucault 1977:200). By the nature of this trap the person who knows they are the object of surveillance 'inscribes in himself [sic] the power relation in which he simultaneously plays both roles; he becomes the principle of his own subjection' (Foucault 1977:202). For Foucault, the major effect of the panopticon is that it 'induces in the inmate a state of conscious and permanent visibility', thus the inmate, unable to verify whether or not he or she is being watched, always holds the thought that they are visible (1977:201).

In West Australian prisons surveillance operates both overtly and covertly, with covert methods providing information without prison officers having to be physically present. Covert surveillance devices include one-way glass, unseen cameras, hidden microphones and listening devices on phone lines and in interview rooms. As technologies grow in sophistication and number, so then, are prisoners even more likely to take on board 'a state of conscious and permanent visibility that assured the automatic functioning of power' (Foucault 1977:201).

To a greater or lesser extent, these measures of scrutiny and surveillance affect all who enter the prison system; prison officials and workers, welfare workers, chaplains, and relatives and friends visiting the prison. Upon entering maximum security prison gatehouses, each person is subjected to the cautious gaze of suspicion where they are asked to produce identification, state who they are, walk through a metal detector, place all other items except clothing on the conveyor belt to be examined by the scanner, be available to be patted down and willing to have the drug dog sniff around them. Thus for Foucault 'this machine is one in which everyone is caught, those who exercise this power as well as those who are subjected to it' (Foucault cited in Rabinow 1984:19).<sup>30</sup> Further, for Foucault the prison is no longer simply 'the place where the penalty is carried out' but

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<sup>30</sup> Outside prisons, information and bio-technological surveillance instruments exemplify Foucault's 'nonreversible subordination of one group of people over another' (Foucault cited in Rabinow 1984:212). In the name of the safety and security of the general public a greater variety of surveillance mechanisms are used as an exemplary means of control and discipline over all subject(s). The probing gaze of biometric identification systems can quickly collect data to be defined, categorised, and within the crowded room, airport lounge or shopping malls. This level of surveillance is best understood, according to Henman (2004) 'not simply as watching and monitoring, but as a calculated practice for managing and manipulating human behaviour' (Henman 2004:176).



an area where the convicted are introduced to new modalities and rules of behaviour (1977: 249).

In Western Australia the introduction to 'new modalities and rules of behaviour', commences in induction and assessment units. It is here that prisoners are introduced to local prison rules, regulations, and disciplinary processes and provided with information on their entitlements and privileges, provided they comply with the rules. Through these means, as well as the systems of observation previously described, the 'usefulness' of the penal object is transformed from 'guilty' subject to the 'disciplined' individual, and 'a productive body' (Foucault 1977:26), marking the transition from feudal and juridical to modern systems of discipline.

What is now imposed on penal justice as its point of application, its 'useful' object, will no longer be the body of the guilty set up against the body of the king; nor will it be the juridical subject of an ideal contract; it will be the disciplined individual. (Foucault 1977:227)

Surveillance continues following release from prison. The subject is closely examined and questioned by parole officers and at times by police, creating the situation where Foucault's 'indefinite discipline: an interrogation without end' and the 'practice of placing individuals under observation' becomes an extension of 'a justice imbued with disciplinary methods and examination' (Foucault 1977:227).

Following Foucault's argument, McHoul and Grace (1993:67) suggest that obedience to rules and regulations produces 'states of docility' as the subject of the surveillance 'disciplines him or herself'. Some caution is appropriate here as I have seen inmates resist the injunction to be disciplined, docile and obedient. Although surveillance is

effective and pervasive and, although it produces a level of compliance in many prisoners much of the time, I recall both frequent cracks in the process and resistance to it. The window of opportunity to be 'unseen' presents itself even in maximum security prisons. Prison industries, for example, have to provide a level of freedom of movement and in such places there are always opportunities behind machines, under benches or inside cool rooms where activities are conducted out of sight: the sharpening of a blade, the passing of contraband, the exchange of goods. Libraries and education units likewise present opportunities to be out of sight, places for illegal and irregular activities when officers remain busy with supervising and doing their 'rounds' of the rooms, cubicles and offices. Similarly, there are opportunities for resistant activities when officers are engaged in prisoner counts and during periods of high prisoner movements from one area to another. Inmates learn that surveillance is only as effective as the officer viewing prisoner movements, and being in a position to counter this is a crucial part of prison knowledge.

Resistance from prisoners towards institutionalised surveillance represents more than the art of taking advantage of a crack in the system. It may also be a political statement that authority is to be resisted and further, that many prisoners, especially Aboriginal people, do not necessarily recognise the law of the state as it is used against them. Resistance to authority carries a powerful symbolic message, even more when underpinned by cultural difference and if conducted with an associated audience for support. Thus, for example, in October 2004 a series of meetings were held at a West Australian prison where a large number of Aboriginal men from a remote area resisted a management decision to let only one person attend a family funeral. The resistance was on the grounds that they and their

Aboriginal peers were required to attend as a part of their cultural funeral rites under traditional law.

Surveillance measures operating within prisons begin prior to arrest and continue throughout the court proceedings. Consequently, the requirements to report to police as part of the court's bail conditions, the removal of a person's passport, and compulsory wearing of a home detention bracelet may all operate during the period leading up to sentencing. They place the responsibility upon the individual to report, to comply and to act under the court's authority without the court having to do the work.

More generally, though, the public is subject to surveillance through devices such as closed circuit cameras, street monitoring devices able to locate an individual from among a crowd and under-cover security personnel. Measures such as these, Foucault suggests, make it possible 'to intervene at any moment', giving what he says is 'power of mind over mind' (1977:206). For Foucault then, the principle of the panopticon, used to provide discipline and surveillance, 'was destined to spread throughout the social body; its vocation was to become a generalised function' (1977:207).

### **Summary**

The focus of this chapter has been how 'being found guilty' affects a person's sense of self. My discussion has drawn on symbolic interactionism, where subjectivity is seen as a process of inquiring, responding, interpreting and redefining oneself (Blumer 1969:5, Cooley 1964:184). Using this as a base, and depicting the self as a performed character,

the product of a scene rather than the creator of it (Goffman 1971:9), I have indicated how, for an alleged offender, the self is produced and reproduced, from arrest through to release, taking the role of ‘the accused’, ‘the convicted’, ‘the offender’, ‘prisoner’ or ‘parolee’. The police and prison officers, judges, and in some cases, family members, have distinct roles to play in this performance.

Goffman’s (1963) notion of stigma helps us to understand how the self is mortified during the arrest in a public place, or standing in the courtroom, prison cell or parole office. Here a person not only becomes a discredited character - a ‘criminal’, ‘convict’, ‘dangerous’ or ‘accused’ person – but also one with a lifelong script. Degradation ceremonies for alleged offenders include the interrogation at the scene of the arrest, especially in front of friends and passers-by, the removal of personal items at the police station, being photographed for the police file and having DNA swabs and fingerprinting taken. For prisoners it includes ‘cell ramps’ and the accompanying removal and/or destruction of personal items. It is above all in the total institution, with these fairly standard practices, that the self faces ‘the processes by which a person’s self is mortified’ (Goffman 1968:24), for they are, ‘fateful for the inmates civilian life’ (Goffman 1968:50). I have also argued, however, that the self is capable of recalcitrance and resistance, a theme which I explore in more detail in Chapter Eight.

I have suggested that imprisonment provides the clearest example of total control, for under the gaze of staff where ‘visibility is the trap’ (Foucault 1977:200), a person takes part in ‘his own subjection’ (Foucault 1977:202). Release from prison, however, does not necessarily bring release from control and surveillance, for as further chapters show,

the move to community living often means a list of reporting conditions, notification and disclosure rules. The punishing impact of a conviction and of being seen as forever guilty, or as a person who 'may strike again' (Garland cited in Bottoms and Tonry 2002:14), establishes the self as marginalised and continually devalued in the eyes of the community.

So far I have discussed the self as though it is gender, ethnic and class neutral. But these factors clearly mediate on the relationship between an offender and the criminal justice system and the impact of the system on a person's sense of self. van Wormer (2001) comments that constructs such as gender, class and race are highly relevant as 'all of the state's institutions – the law, the social welfare system, and the media – are controlled by the dominant group', where, 'on the basis of gender, race and class in combination' the individual is either deemed 'deserving of protection and respect, or as a threat and/or burden to society' (van Wormer (2001:26). It is to these factors that I now turn.

Numerous researchers (Kilroy 2004, Hudson 2003, Findlay et al 1994) have shown how gender influences the way in which the criminal justice system, and more broadly, society, views an offender, and the consequent treatment of that person. As shown in Chapter Two, there are more men than women prisoners, and prisons have been, by and large, built to accommodate men. This reflects, at least in part, the nature of male crime with Indermaur reminding us 'when we turn to demographic differences in violence the single most important variable is gender' (Indermaur (1996:7). Male offenders are more likely to be viewed as violent (whether they or not), and young, Aboriginal males are depicted by the media as representing the face of crime (Sercombe 1995). Further, men

experience and use violence in prison as a form of status and power (Goulding 2002). As I show later, the names attributed to male offenders reflects the equation of crime and particular forms of violence, with terms such as rapist, paedophile, wife basher or kiddie fucker frequently used by police and prison officers as well as peers.

Kilroy (2004) notes that the incarceration rates for women is continuing to rise, with poorer women imprisoned far more frequently than those in more stable economic circumstances. She points out that women in prison tend to be under 30, have less than a high school education, and live in poverty. These observations are echoed by van Wormer (2001:195) who observes that, 'when a woman is a perpetrator, her crime is apt to be borne out of cruel circumstances'. Kilroy also notes that most women prisoners are mothers and primary care givers, typically imprisoned for property crimes, such as check forgery and illegal credit card use, with their offences often related to drug use. In reflecting on the circumstances of female offenders, Hudson (2003:23) suggests that the 'justice' they receive is more to do with who they are, rather than what they have done.

Given the high level of abuse experienced by women prisoners prior to their sentence, (Goulding 2004) female prisoners are likely to face overwhelming humiliation when subject to procedures such as strip searching, subjected. Such processes as Kilroy (2004) Carlen (1983) and George (1995) maintain, to the long-term detrimental effects of punitive policies. Media representations of female offenders now include stories of 'gang girls, women batterers or drug-addicted mothers' (van Wormer 2001:191), rendering females guilty as *women*.

In relation to socio-economic status, the material in this thesis shows how being impoverished, homeless, unemployed, shapes the impact of the sentence as well as making circumstances more likely. Being unemployed, for example adds to the discrediting process and often makes it difficult to obtain good legal advice, make a good impression in court, or find stable housing post-release. In contrast, an educated person is more likely to be able to pay for a lawyer of their choice, to comprehend the charges and statements made about them, and to meet bail conditions.

The impact of the system upon Aboriginal people is well researched and documented (see, for example, The Royal Commission into Aboriginal Deaths in Custody 1991; Blagg and Wilkie, 1995, 1997; Sercombe 1995). Blagg (2001:5) maintains that, ‘whatever the law and order issue, and the style of the “tough” response, Indigenous people will inevitably be caught up in the hard end and subject to its most extreme consequences’. He also maintains that they are less likely to meet the criteria for ‘softer options (diversionary programs, family conferencing, alternatives to custody)’, and face being placed subject to the ‘old options (arrest, trial, incarceration)’ (ibid). In many regional prisons, Aboriginal people make up the largest number of prisoners. Here, and in their city counterparts, cultural identity is shaped by recreational activities, work, and the official response to community expectations, particularly attendance at funerals.

Stern (1998:117) claims that the criminal justice processes often ‘tend to discriminate against minorities, sometimes in very subtle ways’, suggesting that discrimination can occur at each stage of the process (ibid). She makes the point that prison ‘is the

magnifying mirror which reflects and enlarges the unresolved social problems of the society which it serves' (1998:114). Within this context it is important to note that people from non English speaking backgrounds may find themselves without familial and community support, placing them at risk of seclusion, loneliness and cultural isolation.

People labelled 'disabled' or 'mentally ill' are likely to find that the system significantly fails their individuals needs, from the police lock-up through to their return to the community. Having a physical disability or mental illness not only places a person at risk of poverty, but may also mark them out in a visible way, rendering them subject to the gaze of the criminal justice system, in public places and on public transport. Within prisons, having a disability usually means being housed with all other vulnerable prisoners, in sperate blocks with their own internal regimes of power and bullying.

In subsequent chapters I will argue that the criminal justice system's frequent failure to provide assistance in circumstances such as these has a profound effect on how its subjects experience their punishment and how fair they believe it to be. It also profoundly affects how offenders come to think about themselves, their relationships to mainstream society, and their future chances. In attempting to understand these connections, I developed a methodology that enabled participants to tell their own stories as experts of their own experiences.



## **CHAPTER 4**

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### **Methodology**

This study aims to explore the experiences and feelings of people who are publicly declared guilty. It looks at the daily lives of the participants, focusing specifically on their interactions with the criminal justice system from arrest through court, conviction and finally punishment. The study also explores the reflected impact of each of these processes on participants' families. Because the subject matter is of a sensitive and often traumatic nature, the establishment of relationships of trust between researcher and researched was pivotal to the study. In Scruton's (2004:16) words:

All qualitative research is predicated on establishing personal, moral and political relationships of trust between the researcher and the researched. In-depth research sets out to achieve maximum openness in these relationships.

Qualitative methodology was used throughout the research and, because the focus of the study is the participants' own experiences of the criminal justice system, the research methods are heavily influenced by the micro-sociological frameworks of symbolic interactionism and phenomenology.

This chapter begins with a description of the participants and an overview of the research processes and their rationale, and then engages with the complex ethical considerations associated with researching marginalised groups. In the second part of the chapter there is a brief description of the theories underpinning the methodology with a reflection on the strengths and limitations of the study.

## **The Participants**

### ***The selection process***

Eighteen people who had been subjects of the criminal justice system and fourteen of their family members were involved in the research. The “primary participants” – those who had been subject to the criminal justice system were enlisted through my personal networks, and their relatives contacted thereafter. The procedures followed in each case are outlined below.

During my time within the criminal justice system as a convicted person and prisoner, and later as a justice activist, prison reformer and restorative justice practitioner, I formed several friendships with people who had been arrested, convicted and/or imprisoned. It was through this network that prospective participants were contacted for the study. All of the people concerned knew of my history, personal interests and the research topic. Seven of these people expressed a wish to become involved as participants and from these early connections contact was made with other people, via mail or through personal introductions. Within two months five other people contacted me and asked to participate, having heard on the grapevine that I was conducting research. The task of enlisting participants was made easier because I was well known and trusted among prisoners and ex-prisoners and was seen as ‘one of them’.

A specialised sampling method, a snowballing technique (May, 1997; Bryman, 2001), provided contact with other offenders and prisoners, and while it was unable to provide a representative or randomised sample (Hakin 1987:27), it enabled me to interview people

who had information of a very sensitive and personal nature. Snowballing generally involves the researcher using personal contacts to build up the sample size of the group to be studied (Haralambos and Holborn 1991:725).

Contact with relatives was only made following agreement by participants, who were asked to initiate discussion with their family member about possible inclusion in the project. Relatives, like the primary participants, had to provide informed consent prior to commencement. Four participants did not wish me to make contact with their family and one family did not respond to the participant's request.

#### *The primary participants*

All of the primary participants had been charged with an offence and had recent experience of the system. Their age-range, socio-economic circumstances and cultural backgrounds were diverse. The following details provide a glimpse of the make-up of participants and their relatives.

- There were eleven male participants ranging in age from 20-55 years
- There were seven female participants ranging in age from 20-45 years.
- The countries of birth of the participants were; Australia (7), U.K (4), Italy (2), India (1), Sri Lanka (1), Croatia (1) South Africa (1) and Holland (1). Two of the participants identified themselves as Aboriginal.
- Four male participants were in custody when they were approached to participate in the study, three of these being released prior to the completion of the research.

Three males had further charges brought against them during the period of their interviews and one was re-arrested and later had the charges dismissed.

- Two of the three women who were in prison at the beginning of the research completed their sentences during the research, two returned to custody over breach of parole conditions and one left the State.
- Of the eleven men, five were in stable family relationships, four were single and lived at home with their families, and two men remained unsettled in both relationships and residence.
- Four of the men had children ranging in age from 7 years to 17 years. All of these children were in the care of female partners.
- Three of the women lived in stable relationships, with one of these describing her relationship as abusive, and two were mostly street present, moving between friends' squats and often living in unsafe circumstances in short term relationships, and two women lived alone in their own rented flat or unit.
- Three of the women were primary care givers to their children aged less than 6 years old. Five of them had to put their children in care while in prison.
- Four of the men were receiving some form of mental health/stress treatment, one was suffering from a disability and another from a heart complaint which first presented whilst in prison. One man was admitted into a community mental health facility within three months of the completion of the research,
- Three of the women were having regular treatment for mental health/stress related issues, in prison and following release.

### *The families*

- Of the family members who participated, ten were female and four were male.
- Four of the women were partners of male participants and three of these had primary responsibility for their children. Three women were mothers of male participants (one was a sole parent). Three were sisters to male participants.
- Two men were fathers of male participants, one was father of a female participant, and the other male relative was a partner in a relationship without children.
- Two relatives of the seven female participants made themselves available for the research, and twelve relatives of the eleven male participants made themselves available.
- Two relatives, one male and one female, identified themselves as Aboriginal.
- Two of the males were retired; one had full time and the other part-time employment.
- Of the female relatives five worked full-time, two worked part-time, two were retired, and one had full-time family responsibilities.

The level of stress among this group was high, with all four men and eight of the ten women regularly receiving treatment from their doctor for stress related illnesses following the participant being subject to the criminal justice system. One mother was hospitalised following the arrest of her son, while another reported suffering from a mild stroke within a month of her son's arrest. Apart from their local general practitioner, these family members did not received support.

### *Making contact*

Once potential participants had been contacted, formal letters of introduction were sent out setting out the aims and parameters of the research and asking for participation. Prior to interviews participants were requested to sign letters of informed consent indicating their agreement to participate. Access was gained to people held in custody through a protocol that provided relevant Prison Superintendents with at least twenty four hours notice of my intended visit to a specific prisoner, and entry into the prisons was relatively trouble free. There were no problems for me taking notes in and out of prisons but the tape recorder became an issue on one occasion. This was resolved by leaving the recorder in my car and taking notes instead.

Only one prisoner remained in custody for the duration of the data collection, while most participants finalised their community or prison sentence prior to or during that timeframe. Interviews with participants who remained in custody took place within the prison, whilst all other interviews took place at a venue of the participant's or relative's choice, usually at the family home. Additional conversations, where further notes were made, were *ad hoc* and generally occurred within the context of court, police station or parole office.

### **How to ask the questions: methodological considerations**

In preparing my interview schedules (Appendices 4-5), my own experiences of being interviewed in prison by researchers and students working with parole officers and other professional staff were recalled. I remembered only being asked closed questions and not

being given the opportunity to expand or place my answers within a context. Consequently, methods were selected that provided participants with the opportunity to speak freely of their feelings and experiences about people, places and events. Prompts were used as a last resort only to ensure that all issues were covered. Providing participants with flexibility of time and place was essential, so too a secure environment. All participants were encouraged to arrange follow-up interviews from one interview to the next wherever possible; although it was possible for them to make contact with me by telephone should they wish to add further comments.

In the event, these interviews became a series of semi-structured, in-depth and highly informative ‘conversations’. Here the term ‘conversation’ is used to refer to interviews which open the space for reflective comments on the topics covered. Silverman (in Haralambos and Holborn 1991:739) points out that as ‘one of the main ways in which people communicate’, conversations are ‘invaluable as a way of trying to understand society.... a rich source of data which provides access to how people account for their troubles and good fortunes.’ Haralambos and Holborn (1991:735) also suggest that conversation develops naturally during relatively unstructured interviews, with the researcher able to redirect the conversation should the respondent not cover an area of interest. In my interviews, enough space was left for personal comments, silence and recollections while bringing the conversation back to particular issues if they had not been covered, and as discussed by Hakin (1987:27) the in-depth interview provides ‘enough freedom for respondents also to steer the conversation...to bring in all sorts of tangible matters which, for them, have a bearing on the main subject’. The initial

sessions provided each participant with time to meet with me, reflect on the research, ask questions, and sign the consent form. These usually lasted an hour. In all, each participant took part in at least two conversations about their feelings and experiences of being declared guilty, ending with a follow-up interview providing an opportunity to go over transcripts and notes, make adjustments, and clarify details.

As the study focussed on the participants' day to day experiences of the criminal justice system, it was important to ensure that their voices were not only recorded accurately but that their accounts were as full as possible. Thus, and in line with symbolic interactionism which seeks to 'faithfully represent and describe the social world as it is known to those who live in it' (Psathas 1973:7), participants were asked to give as much detail as they liked about their feelings and experiences. These included experiences of being in court and prison, their involvement in and recollections of the street and domestic scenes, and their sense of social and family networks. In this respect the methodology was influenced by Katz's text *Seduction of Crime* (1988) which makes extensive use of participant observation and personal conversations to record participants' feelings and experiences whilst engaged in criminal activities.

That I was seen as 'one of them' (a fellow criminal or ex-prisoner), and, that three of the family members participating in the study were my friends, could call the neutrality of this research into question. From the outset, however, I make no claim that this is 'value-neutral' research, rather, it embodies a particular and strong commitment to providing a space in which the voices of offenders could be heard and better understood. In this



respect, my closeness was an advantage because it encouraged participants to speak openly in words like ‘we can say that to you because you know what it’s like’, or ‘I can tell you that because you understand how I’m feeling’. This was more likely to be the case when a participant was angry with the system, when they felt that they had failed to experience justice, or when describing humiliating circumstances.

In the interviews I was told of personal experiences, previous criminal activity and of periods of personal suffering and trauma prior to entering the system. There was also an assumption that because I had done time, I knew about drug-taking, life on the streets, being unemployed and the impact of the system. I would hear insertions such as ‘don’t you think’, or ‘you know what its like’ as participants talked, and would find myself nodding in agreement while listening. In this sense, the interviews were, indeed, ‘partisan’ research based on mutual trust and the knowledge of shared experience.

At the same time, I had another role to play. This was not so much that of the distant or impartial researcher, but that of a scribe and interpreter. In this respect, ‘getting the story right’ and recording it in the participants’ terms, was more important than the endorsement of the stories or the appearance of being ‘on their side’.

To this end I explained to participants that what was being said by them was respected by me; however, the story was theirs not mine. I would also try to explain that it didn’t matter what I felt or said, for what was important was to record *their* feelings and experiences. Sometimes this was interpreted as distance on my part. On one occasion, for

example, I was asked if I had forgotten what it was like being inside, and on another that it was alright for me because I ‘had a life’. On balance, however, the combination of shared experience, personal endorsement and the more detached ethnographic role worked effectively, with the purpose of the interviews and the nature of my role as researcher well understood and accepted by participants.

## **The interviews**

### *Primary Participants*

The interviews focussed on the participants’ ‘stories’ which began at arrest and for most, continue to the present. I started by asking participants straightforward questions relating to matters such as cultural background, first language, place of arrest and the sentencing court. The responses to this series of direct questions were useful in providing me with background information, as we spoke of family, place of origin, and then the subject of the which court was more familiar. Next I asked about their plea, any advice that they took from lawyers, with an optional question about their charges, listing only terms such as drug related offence, burglary, fraud, assault. I then asked how they experienced the process from arrest thereon, ending with questions about how they experienced life today. As part of this we also discussed participants’ experiences with family and friends as they began going through the court, and in some cases, prison, processes. Almost invariably, participants wanted to continue to talk beyond our agreed time of one and a half hours.

I began the subsequent sessions by going over the previous conversations and then asking participants to talk about their experiences as they went through the criminal justice process. I asked them to begin with the time of arrest and from there I guided the

discussion toward their feelings about the court and their futures. Discussions were all open ended and allowed participants to speak about all topics they felt were relevant to their particular experiences. Twelve of the eighteen participants covered most of the issues in two sessions while, for the other six, additional sessions were required. At the end of each final session I explained that I would write up my notes and tape recordings and return them within a few days so that participants could reflect upon them and make changes if needed. I followed up within another week to collect their alterations and answer any further questions. This situation often led to participants making extra comments.

The period between the initial contact and the first interview varied, with two participants meeting within a week, eleven within two weeks, and another three after three weeks. Two long delays occurred as one participant returned home from prison and then moved again within a week with the result that contact was delayed for another six weeks. I also lost contact with one participant for four months. Resettlement issues and chaotic lifestyles contributed to some of the difficulties in making time for interviews. However, over half of the participants phoned me to provide further information or to discuss something they had forgotten during conversations. I also met two participants at court, attended a police station, sat with a parole officer and outside several cafes in Northbridge. In the case of the five people who were in prison for part of the time, I often became the go-between for them and their relatives, providing news and information from both sides.

Three of the participants (two male and one female) took their own notes for their personal records. These became useful to the study as we were able to share and reflect upon the notes when we next met. The female participant also kept notes of her phone conversations, providing additional reflections. A male prisoner serving a long sentence prepared information to give me at each interview and another provided me with notes he had made from his journal whilst serving his sentence.

Four people objected to having a taped conversation, being concerned that the tapes might 'get into the wrong hands', or commenting that, 'those things scare the shit out of me' and 'I can't fucking speak with that thing going'. Apart from these four cases, all sessions were recorded and my notes made available for the next meeting. The additional notes made by participants not only provided a good place to start the conversation but gave a level of inclusion in the study.

### *Family members*

In all, fourteen family members representing thirteen families were interviewed, eleven at their family home, two at the participants' residence and one at the family business. All fourteen relatives replied promptly to a formal letter and all completed their final session within six weeks of the initial interview. Five families continue to contact me on a regular basis in my capacity as prisoners' advocate and family support person.

All of the family interviews were recorded and I spent a minimum of one hour at each initial introduction session and a further one and a half hours at the following two sessions. Each family member, at some time during the sessions, used the opportunity to

ask me questions about my own period of incarceration, the ways in which I coped, how my family managed, and why was I studying this subject.

Besides receiving my formal letter of introduction and consent form, all family members had been given information about the research by their relative/participant. The initial contact was therefore a time for formally meeting, signing the consent form, outlining the direction we would take during the next session, and being available to answer questions. Similarly to the participants, relatives were asked to provide as much detail as they wished about how they felt about arrest, court appearances, imprisonment and the impact of all this upon themselves, the family, and their relative.

I began the conversation by asking them to tell me how they came to know about their relative's arrest and charges, guiding the discussion towards their feelings about the court, prison, and their future. Following a similar pattern to the participants, all discussions were open ended, and enough time was made available to cover all of the topics family members wished to discuss. I followed up within another week of the last session to collect any notes that I had given them to comment on, discuss any required alterations and to answer any further questions from them.

### **Reviewing transcripts and journal notes**

All data was taken directly to my office at home where it was kept locked in the filing cabinet. Once I had transcribed recordings, copies were locked away until the next interview. I was the only person who had access to the documents and notes. Transcripts and notes were taken to participants for their scrutiny with regard to accuracy of content

and context, and once all data had been verified, I began to examine all journal notes and transcripts.

I colour coded the various sections from each participant's transcript - such as court, prison or arrest - and then broke that section down into two parts: the descriptions of the actual setting, and the subjective experiences relating to these. I then placed each participant's comments about a particular setting together, providing a rich text about each part of their journey through the system. This method was also used for the relatives' accounts. Participants' data remained separate from that of the relatives. I was then able to look at the various threads running through the conversations and establish major themes for each chapter.

This was not an easy task. Added to the complexity already at hand, was the fact that participants and relatives frequently contacted me with further information that had come to mind. For example, three men and two women went through the court process again during the research period. One male was on trial for three days followed by another trial to hear extra charges six months later. Another male faced a pre-trial hearing, followed by a week long trial and was given an eighteen month term of imprisonment, while two women reappeared in court and were given short prison sentences following pleas of guilty.

In order to make sense of the complexity, I first identified several themes from participants' accounts. These included a sense of material and personal loss, feelings of

shame and anger, and an over-riding sense that their identity had been profoundly damaged. I then moved to the families' experiences and noted that they felt they were being blamed and seen as a part of the problem. They also talked about feeling embarrassed, ashamed, isolated and uninformed. They expressed a deep sense of loss and grief and mentioned occasions that inflicted high stress, anxiety and trauma.

In reading and re-reading the participants' and families' accounts, I found that the total impact was almost overwhelming. I came to rely heavily upon friends and colleagues to provide a level of support and debrief at regular intervals. This was invaluable as it enabled me to deal with the evocation of my own experiences. The whole process was a constant reminder of my own vulnerability which helped me realise the cost to the participants as they remembered their own experiences. As Scruton (2004:16) point out:

...revisiting deeply sensitive issues is always an emotional, and often painful, experience. In encouraging people to recall and reflect, researchers have to be prepared for unexpected disclosures and, occasionally, personal discoveries brought on through participation.

### **Ethical considerations**

Approval to conduct the study was sought and gained from Murdoch's Human Research Ethics Committee (HREC). The committee was provided with as much information as I could, including letters of introduction to participants (Appendix 1) and their consent form (Appendix 2). My application was returned with further questions surrounding my roles as an Independent Prison Visitor, prisoner advocate, and senior researcher on a restorative justice project at the University. I confirmed that I would not be acting in my capacity of Independent Prison Visitor (IPV) during the day in which I conducted interviews and to explain my appointment as IPV by the Governor General of Western

Australia under Section 54, Part VI of the Prison Act 1981. The committee were provided with the relevant section, and it was explained that my work in this capacity was voluntary and that I made reports of such visits to the Office of the Inspector of Custodial Services. I also affirmed my understanding of the need for clear separation of roles and to ensure that I would only undertake interviews among participants outside of the other duties.

The Human Ethics Committee also ask for me to outline my proposed referral system for participants should they require or request counselling and support following the interviews. This was obtained through gaining the agreement of a female and a male prison chaplain to be available to speak to participants should they desire it. The need for this kind of safeguard is underlined by Lowman and Palys' (1999) point that 'since the interaction would not have happened if we had not initiated it, a tremendous burden is placed on us to ensure no adverse effects befall the participant because of our entry into their lives' (Lowman and Palys 1999:4).

Following the first four interviews I reapplied to the Human Ethics Committee for additional clearance to interview relatives of participants who had asked to participate in the study. A letter was sent to the committee outlining my reasons for this request and approval to interview relatives was provided.



### **Theoretical considerations underlying the choice of methodology**

In order to undertake this study, I needed good tools and a sound framework to examine what was going on in the daily lives of people as they interacted with the officials and routines of the criminal justice system. Amongst other things, and at a practical level, this involved being prepared to re-enter police stations, courtrooms, lawyers' offices, prisons and parole offices with participants and immersing myself in their world. At the same time, I knew that each person interacts differently, interpreting and making sense of their lives in their own particular way. What I wanted, then, was a methodology that allowed the participants to explore their social worlds in a way that enabled individual reflections on current and past events. This, I believed, would provide - even in some small way - voice to a group who are for the most part silenced.

To this end, I used symbolic interactionism throughout the thesis as a major theoretical and methodological influence, with Goffman's *Asylums* enabling me to reflect on my previous experiences of the criminal justice system and incarceration. Looking back, I can see that my own exposure to all aspects of the criminal justice system, coupled with the theoretical insights provided by authors such as Goffman, became my most valuable methodological tool in undertaking the research. It underlaid my understanding of the unique culture of inmates and ex-prisoners and enabled me to speak freely to participants and their families whether in prison, their homes, shopping centres or cafés.

### *Symbolic interactionism*

Symbolic interactionism maintains that human beings make sense of their everyday interactions in their world through the use of symbols that give meaning to social activities, enabling an interpretation of what others are doing, with these meanings ‘modified through an interpretive process’ (Blumer 1969:2). Further to this, Blumer argues that society is an ongoing interactive process whereby actors are continually interpreting and adjusting their interactions with each other and their surroundings, and in turn providing meaning to objects in their environment (1969:4).

Similarly, Goffman in his study of the social and personal world of inmates in mental asylums, talks about the importance of ‘learning about the social world of the hospital inmate, as this world is subjectively experienced by him’ (Goffman 1961:ix). As an employee of the institution in which he studied, he was able to give attention to the ethnographic detail regarding selected aspects of patient social life and provide a rich text of the symbols, language and social norms of mental hospital inmates (Goffman 1961:x). It was this emphasis on subjective experiences within an institutional context that I brought to this study when talking to participants and their relatives about their encounters in police stations, courts, parole offices and prisons. In essence, Goffman’s approach prompted me to give close attention to participants’ reflections on their everyday lives at home, in prison or on the streets, and to the minutiae of their encounters with criminal justice personnel. As Psathas (1973) maintains, ‘symbolic interactionists seek to faithfully represent and describe the social world as it is known to those who live in it’ (Psathas1973:7).

‘Being faithful’, from a symbolic interactionist approach, means listening and recording what is being said during interviews and conversations, noting gestures and the context of the experience and feelings being described, without distorting, exaggerating or placing the researchers own interpretation on the day-to-day world as described by participants. It also means that space be given during interviews for the actors ‘self’ to be identified by them in the context of different environments and situations as they describe their various social roles, past and present.

I tried to achieve this level of faithfulness by continually going over the recorded statements, asking for explanations where I failed to understand, and by providing my notes and transcripts of recordings, following each interview session or conversation. I was aware that my assumptions about the criminal justice system and its processes could influence the conversation and the participants’ responses so I reduced the level of prompts to a minimum, leaving much of the direction of the conversation to them, and steering back to a topic as a last resort.

One of the difficulties facing this type of critical phenomenological research is the question of identification. From a symbolic interactionist approach, Blumer (1969) asserts that sociologists need to immerse themselves in the social activities being researched, rather than having a superficial familiarity with them. In this context, he describes the research procedure as:

a tough job requiring a high order of careful and honest probing, creative yet disciplined imagination, resourcefulness and flexibility in study, pondering over what one is finding, and a constant readiness to test and recast one’s views and images of the area. (Blumer 1969:8)

Whilst Blumer's argument that sociologists must immerse themselves in the area of life which they seek to investigate matched my own preferences, others maintain that (over) identification carries dangers. Scraton (2004) recognises that research with marginalised people can leave the researcher 'open to accusations of "over-identification" with their "research subjects", of "idealising" the "view from below", of distorting the analysis in pursuit of political agendas and of exploiting the "vulnerable" to build academic reputation' (Scraton 2004:17). I recognised that my previous experiences with the penal system would have an impact upon the accounts offered by participants. It would influence how they saw themselves and report their experiences, especially as I was closely associated as 'one of them'.

To reduce any risk of participants saying what they thought I might want to hear, I refrained from commenting directly on what was said. Without some expression of sympathy or solidarity, however, these interviews could not have proceeded for as Scraton (2004:6) comments 'interviewing people in the immediate aftermath of arrest, bereavement, court cases and so on brings the researcher face-to-face with raw emotion. It is not feasible, in the heat of such moments, to be free of moral judgement or political conviction'. He also argues that 'the most profound personal impact...is derived in bearing witness to the depths of people's pain and suffering and the consequences on their lives of the uphill struggle for truth, justice and acknowledgement' (2004:17). In this respect, the fact that many participants knew the kind of work I was engaged in, and that I had made public statements about the criminal justice system and its treatment of offenders, - as well as the fact that I had previously been in the position of the accused,

the inmate, the parolee, and the ex-prisoner - may have partially assisted in reducing the power imbalance between researcher and researched. And given my previous experience, I was very aware that this indeed needed to be lessened lest the process further disempower participants.

Although I did not explicitly use a feminist methodology, I found Dorothy Smith's (1987:98) work provided crucial insights into the power of the researcher, particularly where research on a disfranchised group is involved. Her feminist stance has resonance for prisoners and ex-prisoners of both genders as of any group whose views are unwelcomed, misunderstood, and discarded by the more powerful. From her work, as well as those of the symbolic interactionists, it is clear that if the voices of the convicted are to be heard, certain conditions have to be met. They include available time, a non-judgemental and reflective stance, and most importantly, trust and integrity. In such ways, symbolic interaction and participant observation assist with having the silence broken and the stories told.

That said, the most important aspect of this research was undoubtedly the contribution freely offered by participants. I had wanted participation in my research, but I had not dared to believe that people would engage so frankly. While this was crucial for my gathering of their stories, I could not offer anything to match their gift.

### **Concluding reflections**

In this chapter I have emphasised the importance I attached to establishing trust between myself and the participants, particularly given that 'in-depth research sets out to achieve

maximum openness' (Scruton 2004:16). My task was made easier by my previous experiences and my friendships with some of the participants and their relatives. At the same time, this proximity placed an expectation on me that I would agree with and endorse what was said. For ex-prisoners, being 'one of them' meant being their staunch supporter, not giving up on prisoner's rights, and a commitment to telling how it is for the under-dog. In addition, there were times when both participants and their families felt that they had been treated well by police and/or prison staff, and I wanted this to be recorded too.

The use of conversations and in-depth interviews provided a space in which participants could be 'interviewed in sufficient detail for the results to be taken as true, correct, complete and believable reports of their views and experiences' (Hakin 1987:27). I found that participants were open and trusting, providing me with many examples to make their point clear and describing experiences with precise detail. It was these accounts which enabled me to draw together a picture of what happens to the self as it become emersed in the criminal justice system.

As later chapters will show, these narratives revealed how participants experienced and responded to humiliation and labelling in different ways, including aggression, desperation, withdrawal, compliance and reflection. Alongside this, the stories of the participants and their relatives revealed significant and prolonged losses affecting reputation, work, housing, employment and personal relationships. Some voiced hope for a better future for themselves and their family, and a wanting to get ahead when it was all

over. Others, and as it will be shown, the majority, experienced periods of acute stress and depression, when they were unable to go outside of their house, visit family, or go to the shops for fear of being seen, getting re-arrested, or attacked by peers. In sum, the impact of the criminal justice system on participants and their families was profound and enduring.

In all, the interviews provided a space where participants felt able to describe their experiences of the criminal justice system in detail, recounting how these experiences made them feel about themselves and others. In essence, they suggested that the great majority of participants and their relatives experienced adversarial regimes promoting conflict, revenge and punishment, seen at the end of the day as unfair and unjust.

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## Chapter 5

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### **Progress through the Criminal Justice System: Participants' reflections on their journey of being declared guilty.**

The criminal justice system is like a leech, it entered my life rather than me entering it, because I was forced to. They came to my business where I was accused and charged, taken to court and later found guilty. I had little chance to explain or say that I didn't do it, and my lawyer said that he will take care of it. He did, thank you. I was sent to jail and later given parole. Now I can't get a job and yet I used to be good at figures and accounts, and still am, but heh, who is going to employ me? Every time I apply for a job it's 'we need a police clearance'. I can't do that, I'm still embarrassed after 18 months, that's why I say it's a leech, it sucks the living shit out of you (Clive).

#### **Introduction**

In describing participants' journeys through the criminal justice system, I have arranged their accounts in a roughly chronological fashion, beginning with their initial contact leading to the first court appearance. I then illustrate the waiting period until the time of trial and sentencing, a period recounted as stressful and confusing. Next I detail the trial or sentencing day in court, a time of relief for some, while for others it was a period of anxiety, stress, loss and disappointment at being found guilty. I continue to follow the journey from the declaration in court to the prisons for some; community work and parole for others. I conclude the chapter with comments from participants on the overall impact of the criminal justice system and draw out some of the themes that run through their commentaries.

Participants met many different official agents including members of the Police, Court and Prison Services, Parole Board, Department of Public Prosecution, and agents from other departments that deal with offenders, victims and their support networks. They also encountered other important players including lawyers, prisoner advocates, chaplains and



independent prison visitors. These people are often on the periphery of the criminal justice system but work to provide safeguards in the treatment of offenders.

The feelings and experiences described by participants often relate to the particular individuals they met and who dealt with them, along the way. It is these agents who are identified as being either unfair and unjust or sometimes helpful and caring during various times of contact. As far as the participants are concerned, initial contact most often began with police officers, and therefore the police are prominently featured throughout the chapter.

In this and the following chapters, participants make a number of allegations about their treatment by police officers, prison staff and other criminal justice personnel. I have recorded these comments verbatim, just as I have any positive comments that were also made. In doing so, I am not evaluating the behaviour of personnel, simply recording the recollections and statements of a small group of their subjects.

Before starting this section, a note on gender. During their interviews, male and female participants equally covered the spectrum of reactions to the criminal justice system. Consequently, as far as the major themes described here are concerned, the accounts of the men and women are not markedly different. Male and female staff - prison and parole - were also seen to be equally capable of good and bad dealings with those accused of offences. Emma and Karyn, for example said that they were 'humiliated' and 'fucked around' by women police officers during the arrest. Similar experiences of abuse were

reported by John and Jude from their period of arrest by male police officers, claiming ‘they stuck the boots in’ and ‘pushed me around’. In contrast, Sandra and Stanley found they were well treated by male and female officers and court officials, describing the staff as ‘helpful’ and ‘good to me’.

### **Suspected, Labelled, Arrested and Charged**

Entering the criminal justice system as a ‘person of interest’ brings about a change of social identity exemplified such things as numbering, photographing, fingerprinting and DNA sampling. As well as by being labelled as a suspect, accused person, defendant or prisoner, some participants remembered being called derogatory names such as ‘crim’, ‘tamp’, and ‘whore’. This change of social identity, which was aided by the removal of items such as belts, ties, shoe laces and jewellery, placed participants in a highly stigmatised position which was maintained throughout their engagement with the criminal justice system – and for some well beyond.

Two participants spoke about the drive to the police station in a police vehicle, feeling that it was noticed by workmates, friends and family. Francis went on to comment:

Having black ink over all of my fingers and hands, being photographed whilst holding a number, and being told to wait in the cell are all experiences best forgotten. They are mostly of a humiliating and intimidating nature, and not helpful in identifying truth or prosecuting justice. We are talking here about something that occurred days before I went to court, and yet clearly I was identified as guilty prior to my trial.

Participants also said that the marginalising process experienced at arrest continued throughout the initial interview, interrogation and the laying of charges. For some, this produced feelings of abject terror. In the words of one of the women participants:

I was petrified. I have never been so scared. Yes. I had to have my finger prints taken, and told to take off all of my jewellery. They took my photograph and videoed the interview, constantly referring to my actions as theft. I felt absolutely awful by this stage, no words can describe it to you. I just didn't want to live. I was so humiliated by this time and I just wanted to die. I hadn't phoned home, no-one knew where I was, no lawyer, nothing. I wanted my world to end there and then (Lyn).

A crucial factor influencing participants' feelings about the whole of the subsequent process was whether they felt that they were treated fairly during this early contact with the police. There was an expectation that the justice system and the people who worked within it, would, and should, be fair. Participants expected that there would be justice for all, and more specifically, that 'I will receive justice.' Several participants expressed anger over their treatment, particularly when extra charges were laid which they felt they did not deserve.

They have a job to do. But they overstep the line, that's not right. If you do something that's one thing, but to set you up is another. They made me angry, more frustrated, and then said in court that I was the hit man. They lied. That's what makes me mad. I'll take the fall for my own stuff alright, but not for theirs, it's not right is it? (Guru)

They never recorded a word of what I said. I signed a piece of paper that they had typed up ready for me, that's the way that they do it for blokes like me. They knew that I would have to take some of their shit with me. I had done several jobs but not all of the places they had me down for, especially the last two (John).

Karyn, who was part of a group arrest, felt that she was treated unfairly by the arresting officers, for although she was trying to break up a fight, she was immediately perceived as an ex-prisoner, becoming the target of the arresting officers. She said that her two male accomplices received light sentences compared to hers.

When they arrested me this time I thought that it was so unfair. I didn't even do anything. I didn't know what he [one of the men who was fighting] was going to do - he was off of his face. I tried to separate the two blokes and was screaming. When the police caught me with the two blokes I knew that it wasn't going to be good for me. One bloke got a good behaviour bond, the other a pissy sentence and I get this [over 3 years in prison] (Karyn).

In contrast, two participants said the police were helpful to them during the period in which they were interviewed and waited for bail applications to be approved. In Sandra's experience:

They were so good to me, really good, they took me to East Perth Lock-up, brought me sandwiches and generally were helpful. They told me that I would remain there until someone picked me up from bail. They let me ring home, and following that day they often called me to ask if I could assist with this or that.

Similarly for Prince;

The police were good to me, in fact they were helpful to me, understanding that I was pleading guilty and that I had further information that I was able to give. They have a job to do, one that is not easy.

Three participants experienced the arrest and first interview as a 'relief'. Sandra, for example, said that admitting her crime provided her with relief from stress. She told me that:

I was not embarrassed by it all at this stage as I felt I had done the right thing by admitting my part in the theft. I needed help to get off of the drugs and this was perhaps a blessing. It was a point of relief. Later I felt ashamed when I had to recall my actions.

Stanley admitted that his crime became a passion precluding him from an ordinary lifestyle. The arrest was therefore almost welcomed, particularly because both his workmates and the police were helpful.

The workplace was great. They were very helpful to me even when I was caught. They knew that I had a big problem, and that I was out of control, and that they really didn't want to lay charges, but they had to. I haven't any bad feelings about work or the police, they were helpful to me, it was my fault and I'm pleased that it's over.

Both Sandra and Stanley felt the system had treated them fairly. This is in contrast with the experience of the other 16 participants, all of whom experienced at least some part of the system as unfair. Karyn, for example, told me how she had been questioned by the police in her own home before being charged with an offence. She had been to jail

several times previously, and was now suspected of having drugs on her property. She said that she was shouted at, condemned as ‘not being any good’, ‘a piece of shit’ and a ‘terrible mother’. As a result:

I was suicidal, shattered, I thought that I was a loser. The police humiliated me. Nothing was fair, it wasn’t right (Karyn).

Another young woman, Emma, recalls how she felt let down and helpless as two policewomen frightened and humiliated her.

The police involved in the arrest had personal contact with me, and they frightened me. They laughed at me and I knew from that second that they would not take anything I said seriously. I was frustrated, and really humiliated by them during the search. They don’t give a shit if you have any achievements, or have done well in the past. They just judge you there and then, not giving you a chance (Emma).

Participants recalled numerous and varied humiliations. They spoke of derogatory remarks about their personal attributes and relationships, orders to remove items of clothing, or show parts of the house that were known to be messy. One participant reported having beetroot and tomato sauce poured over her carpet, another recalled being humiliated in front of her customers and friends. In these cases participants felt a deep sense of injustice and experiences of being victimised. This for example, Karyn:

They came to the house shouting and fucking mad, ransacked the place, poured tomato sauce over the carpet and then stripped search me. If you think that’s fair! They didn’t find a fucking thing because there’s nothing to find, it’s the usual bullshit.

In short, the interview and interrogation were often experienced as abusive, unfair, and brutal. Participants claimed they were subject to comments such as ‘You did it didn’t you, you fucking asshole?’ or ‘your kind make me sick...nothing but scum’ and said that they were sometimes punched, kicked and knocked to the ground.

They didn't waste any time on me, just stuck the boots in, threw me onto the cell floor, kicked me in the ribs, then left me. I expect that treatment every time I go there. That's their justice system (John).

They were fairly abrasive, shouting at me, pushing me around...making me feel like a low-life kind of person. I just stuck to my guns and made it as difficult as possible for them, asking for drinks, demanding food etc. I was in a state but didn't like the way they were treating me, pushing me around, and making me feel uncomfortable. I became defiant. Only the police said that I was guilty, no one else (Jude).

Not all interviews took place in front of sound and video recorders, and several participants maintained that the worst abuse occurred prior to being taken to the police station. From Trendy:

No fucking video man, no way did I get that, I went off my face I tell ya. What's said and what's wrote during that fucking interview was like hey, two stories! They didn't like what I said, so wrote down what they wanted. It's difficult to refuse to sign when they hit ya fucking head and hands several times... not knowing what comes next, and hey man, they were fucking women.

### **The first court appearance**

The next significant step for participants was their first court appearance. They were rarely sentenced on this appearance and most expressed confusion, humiliation and shame at hearing their name called out, charges read, and the facts supplied in court. Lyn remembered her first court appearance as a time of misery and confusion:

I was crying. I first of all said that I didn't do it and then he said I needed help. I was so confused. It's horrible. They don't make it easy for you do they? Yes, I did try to speak to the judge but he cut me off and told me to go and get a lawyer. I wanted to tell him about it all, how I felt, and about what had happened to me, I felt too ashamed to tell my family. He didn't want to hear my side of the story from me, and told me to go away and find a lawyer for advice. He wasn't very nice to me, and seemed aggressive, so I went and got this lawyer, someone recommended to me. I was so humiliated by them.

The capacity of the media to provide reports about alleged offences prior to trial was mentioned by five participants who said that this cast them as guilty from the outset. In my own experience, I found that the media had been informed by the Police Public

Relations department of the nature of my crime and the court number and appearance time of where I was to attend. Keith commented that the media, in its rush to publicise his case, had put him through ‘a shocking experience, one that is enduring well beyond the sentence’.

My case was very public, and although I pleaded guilty at the first opportunity, the stories that they ran on TV and in the press had me as the lowest of the low. It didn’t feel good then and it doesn’t feel any better today.

And Karyn related:

When you’re seen as guilty and the media spreads it everywhere, it isn’t always accurate. That’s another problem. It sticks right through your time.

The time immediately outside the courtroom presents an opportunity for those familiar with the system to share experiences and give information to others about the penalties that are likely to be given. John has been around the system for 20 years, watching people feel nervous, and chatting to strangers about the charges they face.

There’s always a young bloke or two who wants the world to know how tough he is before he goes in the dock. That’s when I tell him outside the court that if I see him inside, he’ll squeal louder than he’s ever done before. I watch his smile disappear, then tell him I’m only joking, and if he needs help to let me know (John).

The great majority of those I interviewed felt that whether or not they took responsibility for the crime, showed remorse, provided evidence against others or cooperated, they were labelled as a criminal, a bad person, and someone who therefore could not be trusted in society. This feeling was reinforced during applications to the court for bail. Four participants explicitly pointed out that this was because it was a time when the prosecution could argue about the danger and risks to the community should they be released from court or custody. In talking about this, Guru remembered how:

First they put me in Hakea, my lawyer then made an application for me to be released on bail, that was about 10 days later. When I got to court from Hakea the police said that my charges were too serious for me to be released. The magistrate told them I could report at the station every day and have a curfew. They said a lot of shit about me, but it got me out.

Guru remains convinced that he was not listened to by anyone and was blamed for things that he didn't do. He contends that he has not been treated fairly, and has come to blame his lawyer, friends, the police and members of his family for his current circumstances. He feels that the whole system is against him and that he must fight it.

Yeah it kinda makes you understand how they think about us. It doesn't really matter to them if I'm guilty or not does it, I mean they just tell you that they've got you for it - you're in the frame. I think that makes you weary of the law. No-one tells the truth in there, and the judge gets all this shit to listen to. He only hears what the cops tell him. He's not interested in me is he? I can't say a fucking thing. That's why I changed lawyers, he was fucking useless, and wouldn't listen to me. He kept telling me that it was all going to plan. Yeah whose fucking plan. Mum says I shouldn't do this and is on my case, my brother didn't do what I asked him to do, and now look at the shit I'm in. I need some good help some proper advice before I go down again (Guru).

### **A period of waiting**

Returning to home or work following the initial court experience can be frightening and humiliating, often accompanied by feelings of shame and remorse. This was voiced by over half of the participants I talked to. Here two participants tell of this period and the misery that accompanied it.

My self esteem was nothing, and all I could think of was that I had let everyone that I knew down, from work, family through to very good friends. I thought that I wasn't worthy of anything and that the best thing to do was not be around any more. I knew that I had brought a lot of harm to so many people, and that it was more than embarrassing- downright shameful. I felt that life wasn't worth living at times. I had to get help, and I had to tell my family and work. That was the hardest thing to do (Keith).

When we left the courts I felt like I was being watched by everyone. At night I wouldn't touch the phone, or answer the door, and didn't much care for friends coming over. At work I kept to myself, and after work I went straight home, no



drinks, no stopping for a meal out. I isolated myself among my family, feeling ashamed and blaming myself all of the time (Francis).

For many participants this period of waiting, between the first court appearance and the trial or sentencing day, was marked by withdrawal from ordinary community activities. Not going to business lunches, avoiding a few beers with the workmates, shopping at distant centres and changing hairdressers were a few of the examples given. Lyn and Francis speak of being embarrassed and ashamed, and wanting to avoid public gaze.

I never went near those shops again, and felt too ashamed to see my work colleagues at all. We went out for drives down south, and caught up with family, but I was too embarrassed to go anywhere I was known (Lyn).

I would cross the road and use side streets rather than worry that I may meet someone from the workplace. I gave up going to the footy, wasted a season ticket at the WACA, but just couldn't do it. I was really ashamed of what I had done, and the thought of meeting someone who knew me was all too much (Francis).

These feelings of shame and embarrassment were accompanied by a conviction that the public was watching and condemning them. Clive told me how:

I went to the bank with my wife to change our mortgage and was offered some insurance. They asked us to answer some questions that included court convictions. I looked at my wife, then told the assistant that I was on bail. She spoke with her supervisor about me, and within 5 minutes the whole branch must have known. We were really pissed off with them, and like I said, I was pleading not guilty. Later when I was found guilty, we went and changed branches again.

For those participants who were in regular contact with the justice system, matters were even more pronounced. Karyn, Ronald and Trendy all spoke about this:

Once a crim! That's what they say, I'll always be one in their eyes. I've been called a fucking whore, a drug dealer, but never by my first name (Karyn).

They don't care about me no more, it's all fucked, they see me as bad. They tell me they'll get me for this, yet I'm not as bad as they say – a bitch, a slut - really (Trendy).

Everywhere I fucking went man, see they said I was this and that - the fucking wankers, they called me everything for more than two years. I hate the cunts for that see. That's no way to treat a person. Old friends, some business people, even some family wouldn't speak to me (Ronald).

Six participants talked about the difficulty of reporting once a week or more. These difficulties centred mostly on getting to and from the Community Corrections Office. In addition, Guru was angry about being bailed to appear in court later for sentencing. He felt that he was destined to fail, having had his driving licence suspended immediately.

Reporting to Warwick Police station gave me the shits, especially after they took my license away immediately, that fucked me right up man. I had to go there twice a week and couldn't stay out after 9.00pm cause of the curfew. That's when they caught me the second time – driving home from work. My brother or parents had to drive me everywhere, and my car was always watched (Guru).

Zach also found reporting conditions difficult because of his driving problems:

I had to report at Central for over three months before going back to court, twice a week and without a licence. It meant that someone had to drive me there, and wait while I signed in. Sometimes I grabbed a bus but it was always fucked. It wasted at least an hour (Zach).

Waiting for sentencing was a stressful situation for almost all of the participants, even those who pleaded guilty at the earliest opportunity. For those who acknowledged being involved in some form of criminal activity, and were sentenced to prison, describing the actual circumstances to close family and friends and seeing the impact of this, were said to be worse than doing the time in prison. In total, all except two participants talked in this vein.

Really so much happened before I went to court to be sentenced and then to prison. I knew what I had done was wrong and I couldn't live with myself (Keith)

Prison was easy mate see, it was all that court shit that stressed us all out man, the waiting and shit, see, all that time (Ronald).

In Emma's case, professional support was helpful, during this time:

I saw my doctor regularly and he helped me, he knew about my charges and the court stuff. I felt terrible right then but I knew that I had the inner strength to get through. I don't feel bad about what I did, but feel that the situation should never have lead to that (Emma).

## Court & Sentencing

Of the participants in this study, seven were fined, sentenced to a court order or given a suspended sentence, and ten were sentenced to prison. Ronald had previously appeared in court, pleaded guilty and served a period of imprisonment. However, during his last set of charges he was found not guilty.

In all, court and sentencing was a first time experience for ten participants. They described feeling ill-informed, abandoned, out of place and unsure of what to expect.

Thus Ronald told me of his first court experience:

Like I said I was shit scared, nothing made sense, but no I didn't know what to expect mate, I hadn't done jury or anything like that so I hadn't been near a court. The lawyer just said to meet him at such a time, and then we went into the room - you know up on the fifth floor. I didn't know what to expect there. I'd been to the other court for something when it all began, then as soon as I said not guilty they said I had to go to some hearing then to trial. [*Was that a preliminary hearing then?*] Fuck knows, I didn't say a word, they just kept talking about this law and that, asked questions by the judge that kind of stuff, I've not a fucking clue mate see it was all new to me (Ronald).

Sentencing day was almost overwhelming for the great majority (14) of the participants.

Francis recalls his walk up the steps to the dock in the Supreme Court, describing the grandeur of the place, the wooden panelling, the wigs, the robes and the etiquette. He told me that he remains very nervous of the building, avoiding the area geographically, and still experiences feelings of total disbelief that he was declared guilty. He says that he can still smell the place. Part of his anxiety about the place is linked to distrust, - a feeling that the system was unfair and the odds were stacked against him:

The court made me very nervous and afraid, but more than that, it has made me feel that it is not a place where justice will be done. I didn't have money to spend on a QC or Eastern States barrister, I had Legal Aid, and while they did represent me they told me at the beginning that they were too busy to see me much before the trial. I now feel that they didn't perform well, and that to them I was just another number. While I left the court to go to bed at Hakea Prison, they went to

their family in a quiet suburb. During the two day trial I was not able to participate more than for about 10 minutes. The longest time that I stood up was during my sentencing. They could have put a monkey in my place and the Judge wouldn't have noticed until sentencing, only then did he look me. I don't blame him, but I do think that he and others should take more time to talk with offenders, not always with the lawyers (Francis).

The fact of being unable to state their case, apologise or make a comment, meant that a great number of participants (fourteen in all) felt the whole thing was prearranged, leaving them without a chance of being seen or heard.

In the court you should be able to speak for yourself, but they [court] don't like that. It's all a farce. They arrange it and talk about it between themselves over lunch (Karyn).

Yeah very frustrated...I was invisible. And I was like a fucking mute. I felt that they didn't really want me in there, ...they isolate you from the rest as though you're a poxy leper. And you know how big I am, they couldn't miss me! They just wanted me locked up from the time I got there, it was all fixed (Guru).

On the day, the court didn't allow for personal comments and that is a great shame really. I think that it is so important to be able to say what has happened and to be in a position to provide an insight to the judge on you as a real person. I appeared to be seen only as a criminal, or at best, the accused. I had apologised to my family and the company, but couldn't do so in person, in court (Keith).

There's no place in court for me to say yeah, I fucked up real bad, but I want to say sorry (Lill).

Ron had pleaded guilty to charges and was serving a period of imprisonment when we first spoke. Soon after our second interview he was released and within two months he was charged with 12 offences that he was alleged to have committed prior to his custodial sentence. Subsequently he went through a second court process. This time he pleaded not guilty, and was found as such on most charges by the jury. The remaining charges were brought before the court during the next trial where he was found not guilty to all but four charges, where the jury could not make a decision. These four charges were left to be heard during a proposed third trial, but were abandoned by the Department of Public Prosecutions due to a lack of evidence. He was deeply upset about the prolonged

exposure in the courts and his experience of being reconnected to the criminal justice system soon after his release from custody.

This fucking lot, they wouldn't know the meaning of the fucking word [justice] mate. See they don't give a fuck who they accuse. They wanted me after the first court thing and kept on to me. Three fucking trials see, what a waste of money that mate, and all for shit. There is no compensation see for blokes like me that they tried to shaft, no compensation at all, they can wrongfully attack you in court, try to prove this or that and know that you didn't do it, then just let you walk free from court... no fucking sorry, no nothing mate (Ronald).

Three participants claimed that their defending lawyers were unfair or incompetent. Guru recalls asking his lawyer '*Yeah whose fucking plan?*' after he had been told that everything was going to plan. Lyn said she didn't get any advice on the legal issues, and was told to plead guilty. She didn't meet her lawyer until a couple of days before the court.

He told me to plead guilty even when I argued with him that I didn't steal the money...that cost me more in legal fees than it did in the fine (Lyn).

A different but related account was provided by John who told me that he got his lawyer from Melbourne, 'cause the local boys are in their pockets – Mum paid for it and it helped'.

Against the general feelings of grievance and unfairness voiced by the majority, four participants felt that matters improved during the court process. For example, Emma who had experienced being 'put-down' and 'intimidated' by two arresting Policewomen said that she found the court to be fairer in comparison.

The courts do not have the closeness of contact [as police do] but they seem to me to be fairer, taking all of my past into consideration, things I've achieved.

Similarly Sydney believed that:

The court was fair to me, and the lawyer from legal aid was helpful. They really tried to support me and get me back on track.

Sandra described her experience of the drug court programme as a relief, ‘being seen and treated as a person rather than a case’, and although being scared by the thought of the court process and the seriousness of her crime, she felt that she was treated fairly by both the Drug Court and the District Court.

I was shit scarred. I had sat and listened to the judge speak to a few people in front of my case. Then it was my turn and he was suggesting that I go straight to the women’s prison. Shit that was really scary stuff. I knew that it was my fault though and I thought that he was right. The judge earned my respect right then, he had a job to do. He was right of course. The drug court showed me a great deal of tenderness (Sandra).

The feelings of these four participants – the sense that they had experienced fairness at court – was held regardless of the sentence imposed. Importantly, it linked in with their entire view of the system which they generally thought operated reasonably well. In contrast, those who experienced the courts as unjust and unfair (14), felt resentful about the whole process. Ronald, who had been through his third trial within 12 months said he was:

I was still angry with the bastards, the lot of them. That fucking prosecutor in the second trail with his “I put it to you” I’d like to put it to him the fucking wanker. I tell you mate they haven’t a clue, not a fucking clue. I hate the fucking lot of them see (Ronald).

It is not the people’s court is it? All of the well dressed and well heeled sit in one place, and the rest of us are all onlookers of sorts. The only thing I was able to say was Not Guilty, and that had little effect on the proceedings which took a turn for the worst. There appears to be very little fairness to me while I’m silenced by people who are supposed to be representing me, and told to be quiet by the Judge who has not been told the other half of my story (Clive).

Allied to these feelings was the sense that the court was aloof, not interested in the truth and that it performed like an assembly line. Francis and Lyn spoke many others when they said:

The court is not a nice place to be at. I don’t know why that it has to be so. It is heartless and cold, a place that is full of tradition, pomp ceremony and yet leaves

out the truth. The full story is omitted, and only facts to do with the negative section of a person's life are exposed (Francis).

The court could have been helpful to me. I didn't know what to do or say, when to stand, sit, bow, or keep silent. I entered as a novice, without support, alone, and broken, and all I wanted is for the judge to be kind and listen to what I had to say. That was never to be. I walked out so disappointed with our court system (Lyn).

For those sentenced to prison, the courtroom was the last place they saw until they arrived at the lock-up on their way to a prison. This group recall being in shock, depressed, and scared of what to expect. For some it was an experience that they would never forget. Francis:

I was still in shock. Not going home with the family, no more cat on the table, no more home cooking. Where was prison? I had never seen one before, and had no idea of what it meant. So many years away, I needed to keep calm, say a quick cheerio to the family, hug my partner and kids, my friends. Then it was down the steep steps of the Supreme Court chamber into the cells. When they say 'stand down' they mean it! Where was I going to? How long for? When would I see my family again? Questions and more questions. My head was spinning and my thoughts numbed by the goodbye. I had been found guilty, sentenced and now it was their time of revenge.

### **Prison, Parole & Rehabilitation**

Among those I interviewed, eleven participants had experienced prison at some point in their lives. They spoke of it as a brutalising and humiliating experience, producing intense feelings of frustration and resentment towards the criminal justice system.

Participants often queried the effectiveness of prison in their conversations with me.

Clive for example, spoke about prison being:

Quite damaging to everyone who steps inside. The blokes doing time with me were ordinary men, who may for sure have fucked up but they didn't start off in life as bad people. Prison - if you're not bad - contributes to you being at least seen as bad. And once you get into the swing of things you start to see that the system is against you so you have no choice but to fight against it, if that make any sense. It sure does when you're on the inside.

And Ronald, who had been on bail for 18 months, living and working in the community, asked:

Why fucking prison mate? See they could have had me locked up at home, one of those bracelet fucking things. I would go nowhere no way mate no fucking way. That would have saved thousands see they wouldn't have had to cook and shit like that. Where would I go with family all here mate. I didn't need jail I'd been out up to the trial for 18 months mate I didn't give any trouble, a fucking waste it all is I tell you mate, a fucking waste see.

All those concerned were clear that prisons utterly failed to rehabilitate. For some it was a matter of the "same old routine", with John commenting that:

I used to go straight to Worooloo, but last time it was out to Hakea then to the farm. I know the place like the back of my hand, it never changes, a bit like home without the comfort, but still they do nothing to help. I go in, spend their money and come out to the same problems facing me. I don't get helped, just told to behave, as if eh?

For others, it was worse than this. Francis told me that:

Prison encouraged me to respond to situations more violently, more aggressively, and with far more anger than I ever thought was within me. I felt isolated and removed from people, especially prison staff. I used to be polite, had a sense of respect for authority, and trusted the community to provide good government and a just court system. Prison opened my eyes. I was not only naive about all of this but now realise that I had been totally fooled like the rest of the people. Prison is more than a holding pen, it satisfies the anger and frustration of governments who do not have the skills or experience to deal with crime. Prison is a place to hold people while someone who knows not, or cares not, dreams up more public policy documents and bureaucratic adventures as a solution to the problem of crime. The criminal justice system has been politicised to such a degree that criminals now see themselves as victims.

If prison is hard, so is re-entry into the community. Here the lack of access to quality post-release services is a major issue. Noni and Lill speak for others when they recall:

Coming out of prison is the worst for me, as I need to get back into life, but it isn't easy what with debts etc. I usually have a debt with Homeswest, and power bills and then I need to find a place to stay. I can't go to [named service] as they kicked me out for using last time, and so the street-life presents a short term solution, but it isn't something that I want for the rest of my life. I love dancing and the club scene, self-defence, and I still use a little when out. I get a bit of help from a few of the old places but there's nothing from corrections, no programmes for women like me (Noni).



Each time I have got out I have not had enough support from the right people. Sure I get it from my dealers, but I need to keep clear of trouble. I would just love to fall back into a comfortable chair, have my man and our daughter near me, and no shit from anyone. But that's my dream. We have jackshit. My bloke is good to me but he can't work, and who's going to give me a job apart from the one of the brothels. I've been there and done that, it makes it worse for us in the long run, and I have to be off the gear. I rely upon a couple of places to give us a hand to make it through the week, that's when I'm at my lowest and start to think about doing a job for someone, selling some gear or getting laid for a few bucks. It stinks I tell you. I just want to live like everyone else (Lill).

Anger and disappointment with community corrections offices was commonplace.

Participants spoke about the difficulties when trying to negotiating their 'release conditions' during stressful life circumstances. Karyn said that her parole officer:

... hasn't a fucking clue how I live and what I need. I could tell her what I liked and she wouldn't know any fucking difference. Man she's never been to my place when I get out, and when I do ask for some help she says that's she's not able to help with that or gives me a load of shit.

And for John:

How many more times will I have to go through all of that shit. You sit there with some officer who has no idea of what and who you are. She sees the times you've been away and gives up on you immediately.

Many participants spoke about the prolonged consequences of being 'declared guilty' and their difficulty in achieving any sort of closure, saying they felt branded, known only as a 'crim' and in relation to their previous record.

In the words of Karyn and John:

If I'm inside or out I get treated with the same shit, so I never get seen as me, just a crim (Karyn).

I'd just love to be seen as normal by those cops, instead of my file being marked 'dangerous'. I've done my time (John).

This issue was discussed at length by Keith and Francis. They spoke about:

It is quickly approaching ten years since my first and only encounter with the justice system of WA which was at the age of fifty. I now walk every day in the knowledge that my life is in the full glare of an unforgiving society towards a person who has offended. I wear the shame and scars of imprisonment and

criminal convictions that will always be with me, no matter where I venture, a job interview, bank loan, insurances and visas for travel with my family. I am branded as bad (Keith).

It hardly seems right that after a long sentence, paying compensation, and having to begin two years of reporting, that I still have to say that I'm a criminal, and of course go through my offence once again with a stranger who looks at me as though I have two heads. When I was told that I was still a high risk, after being on the farm for 3 years or more, and doing all of my pre-release, I couldn't help but think that I am being treated very unfairly, and that this is not justice but some kind of revenge. Keeping me as a criminal didn't help anyone, and made me think that rehabilitation is something done on mining sites because it sure isn't done in the justice system (Francis).

And later on Francis returned to the same point:

I know my actions were wrong and yet I served my penalty meted out by society. The injustice of the punishment not ending at the prison gates continues each and every day of my life and this is in a society that says it is fair, I say that its very unfair and unjust. There must be an end to punishment not just a dead end.

#### **Four underlying themes**

Over and above their accounts of what actually happened, participants also talked at another level, voicing their feelings about the nature of the system, how it operated, and how it affected them. Thinking back on the interviews, and re-reading the transcripts, I was struck in particular by four themes. These can be summarised as follows:

- Participants felt that a sense of 'being guilty' was imposed them early on and dogged them through and beyond their formal connection with the criminal justice system.
- Participants experienced a prolonged and close engagement with the system, connecting them to it even when they were not legally bound to it.
- Participants personified the system and gave it an identity.
- There was an expectation by participants that the system would be fair and just and they felt angry and resentful when (in their experience) it wasn't.

When I was developing the thesis, I had presumed that feelings of guilt would mainly attach to the actual experience of being publicly declared guilty in a court of law. Instead

I found that far from being a one-off event, the sense of being ‘found guilty’ occurred at various times and places from arrest through to release from the requirements of law. Thus Karyn, who had been through the courts and prison six times prior to my interview with her, told me that: ‘From the start of every arrest until I get settled inside they let me know that I’ve fucked up real bad and done the wrong thing, - then they punish me all over again. It’s like a broken record - although now I just turn off.’

For most, the experience of being found guilty started very early in the process. This was vividly encapsulated by Lyn.

I can still recall that interview on the shop floor and then again when the same things were said at the police station. They kept telling me I was guilty and although I argued with them it still hurt me. Then, when I was told by my lawyer to plead guilty, I felt the whole world was against me.

Three participants talked about the role of their family in pressing the guilty charge. Guru, for example said that his mother told him many times that he must be guilty and that following each visit by the police to their house she “accused me of lying to her, and said that I was a criminal – by the time I got to prison I had heard it so many times from her and especially the cops, it gave me the shits.”

Of the eleven participants who had experienced prison, seven stressed the role it played in reminding them that they were guilty. Ronald said that “they said listen; the court’s found you guilty so as far as we’re concerned you’re guilty. When I said I pleaded not guilty because I didn’t do it they just laughed.” Keith told me that he was particularly concerned by the way that he was judged several times whilst in prison. “I knew that I

was guilty. I didn't need them to remind me of it every day, judging me at each turn."

And Prince summarised the situation for many others when he said:

They tell me before I went to court that it was my fault, - I had myself to blame.  
And when I left court and got to Casa [Casuarina Prison] with the rest of the mob  
they said I done this. They think us mob are all guilty, they tell us all the time.

I found that the majority of participants (14) talked about their prolonged and / or close engagement with the criminal justice system, a feeling of being consistently connected, even when they were no longer legally bound to the courts and its apparatus. This included a feeling of continuous surveillance and anxious feelings of waiting, either for the police to knock on the door, or to be returned to court for a simple mistake. Six of those fourteen participants said that they felt that everyone knew they had recently been released from prison or had come from the courts, and that word would soon get out to the police. Fear of arrest and re-imprisonment as a result of some form of conspiracy against them was common.

I'm scared when I go out that they will get me for something, they just do it to me all the time, even when I'm no trouble to them. I keep out of sight when I can (Lill).

When I did get out of prison it took me so long before I would even walk down to the local deli (Keith).

When we left the courts I felt like I was being watched by everyone (Francis).

Five of these participants went on to stress how much this feeling of being under public scrutiny dominated their everyday lives. Lyn talked about her anxiety as she applied for another job, explaining that: 'I don't want to say about my past, but there it is in front of me, asking for a police clearance - just the thought brings about an anxiety attack, I don't know what to do sometimes, it always seems to haunt me'. Similarly, Emma told me that she still lives '...under the shadow of the police', saying that 'I'm so afraid of being

arrested again that I live in fear of another charge and find it difficult to drive straight if there is a police car behind me - I get real paranoid but can't help it'. Keith spoke of his feelings of being constantly connected - although not legally bound - to the system as a 'scar' to wear throughout his remaining life:

Everything that I do today is based around my history of a couple of years ago. If I apply for a loan, job, visa, or whatever I know that I have a history that is seen as bad. I wear the scar of imprisonment and a conviction that will always be with me. There is no rehabilitation, no forgiving within our society once a person has offended.

Clive spoke in a similar vein. Although he had completed his sentence and parole, he talked as though he still had no real freedom:

Following my short sentence my whole life changed. Bankers, insurers and many of my business connections either wanted, or needed, me to declare my criminal conviction. I'm inclined not to travel as we used to as I would have to declare my past history to various other authorities, and whenever I have to change jobs I have had to explain why I can't get a police clearance. I may be free, but I do not feel that I have freedom.

In reflecting upon the transcripts, I also found that almost all (15) of the participants personified the criminal justice system, giving it an identity and frequently naming it as 'they' or 'them' regardless of whether they were referring to personnel from the Police Service, doctors working in the prison, parole officers or court orderlies.

Of those who personified the system in this way, eight participants (5 female, 3 male) talked of a strong, prolonged and personal relationship with it, describing a mutual familiarity. John and Karyn, depicted the details of various prison units, police cells, and courtrooms, naming many staff and magistrates. Similarly, Lill and Guru were very familiar with lawyers, court staff and local police stations. Guru named six local lawyers during his interviews while Lill gave a clear picture of East Perth lock-up and several

staff, adding; 'I get on well with the boys [police] down there, they always find me a quiet space and give me a smoke to shut me up'.

In contrast to Lill's favourable assessment of East Perth Lock up, most of the personified remarks were negative. In the four most extreme examples, the system was described as 'completely fucked', 'useless' and 'not having a clue to work with', or more aggressively - the 'aggressor', the 'juggernaut', the 'fucking bastard'. For Clive 'The system speaks with one tongue, forked! They must all go to the same school.'

Ronald repeatedly called the criminal justice system 'fucking wankers', 'bastards' and 'a load of shit', stating:

They fucked me around real bad mate so fuck them too I thought, I stayed in rather than applying to get out to parole see mate, - I cost them another fucking year.

As Ronald's comments illustrate, a marked element of this personalised relationship was that it was played out in an adversarial nature, with participants reproducing the adversarial nature of the legal system to which they were subject. Thus Clive described the system as 'worthy of revenge', saying 'I want them to know that I really do not like them'. Guru, in a similar vein, said flatly that 'I'll do my time then get even'. Karyn told me that she gave 'the screws a hard time' in response to the way she experienced being treated by them: 'I don't change' she said, 'and neither do they'.

Despite all this, all participants believed that the criminal justice system should, in fact, be fair and just. Against this, and with only three exceptions, all claimed marked failures in justice in their own cases. Thus Karyn claimed that 'Nothing was fair, it wasn't right'.

Similarly Clive stated of the court: 'There appears to be very little fairness'. Francis, too felt that 'they had my case tied up before I went into the court with what we still believe to be some very false evidence'.

The feeling of grievance was particularly marked for those who had previous convictions. For eight, this led to the situation whereby they actually ceased to have any faith that they would receive personal justice. Five of those who felt they had been treated unfairly modified their claim by saying that the system had a difficult job to do and could even appear at times as 'bloody helpful' and 'good to me'. However, only Stanley, Zach and Sandra experienced the system as being fair and just throughout the whole process from arrest to sentencing. All three had pleaded guilty, assisted police with enquiries and were sentenced to community based orders. Stanley states: 'They were very helpful to me even when I was caught'.

Importantly, participants who found the process unjust and humiliating were less likely to accept responsibility for their actions than those who felt they had been treated fairly.

Clive recounted how:

I wanted to take the responsibility for what I did, which was quite a considerable amount, but not for the extras they put on me, that really made me angry. I thought about it and then I called my lawyer and pleaded not guilty, but in fact I wanted to tell them that I did some of this. It's silly of me I know, but I felt quite ashamed until they added that extra stuff onto me, then I felt 'well fuck you too'. I began to feel that they were no better than me, and even felt as though I was being made to look stupid, and dare I say unprofessional.

In summary then, being treated fairly – a fair cop – was important to all participants, and was crucial to the extent to which they took responsibility for their actions. Only four participants found the court to be just, with most participants experiencing it as a place of

abandonment, where they were ill-informed, and not a place where their story could be told. The arrest and initial interview were spoken of as the most common places to be declared guilty, and the least likely places to experience fair treatment. So while participants expected to receive natural justice in a fair criminal justice system, they alleged unfair and unjust treatment at the hands of a system that had become for most, a personal adversary.

Further, the participants' accounts suggest that the process of being arrested, accused, charged and punished produces a 'criminal' label which endures through time and physical space. Damaged identity is something that will be discussed further in Chapter 8, suffice to say here that all participants agreed that their lives would never be the same again following their encounter with the criminal justice system. Being judged and labelled affected all participants in one way or another, even those who were well accepted by others who had been convicted. Participants reported that the process had an impact upon work opportunities, being trusted by other people, how they were treated by businesses such as banks and insurance companies, relations with the police and treatment at places such as Centrelink.

Their personal stories provide a complex view of offender/system relations that is at once both alarming and contentious. The next chapter reviews how the process was experienced and viewed by family and friends.



## Chapter 6

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### **Progress through the Criminal Justice System: Participants' families view**

The time he got arrested and imprisoned was the most shocking, depressive and oppressive time I ever experienced. Through living with so much fear and turmoil, I had hoped against hope that the worst would not come - but it did and I just could not bring myself to be there at the [police] station or the courts. I was so fearful of the consequences I could not even enquire about his whereabouts. The first prison visit was shocking, will remain ever present with me, but did help me go back and keep in touch. I had to accept my son as a criminal

(Eleanor)

#### **Introduction**

The last chapter was devoted to the experiences and feelings of participants. This chapter turns to their families, recounting how the whole situation appeared to them. In this respect, fourteen family members' voices (representing thirteen families) complement the eighteen participants' stories. Four participants did not wish me to make contact with their family. One family did not respond. The family members participating in this part of the study included partners (5 female and 2 male); mothers (3); fathers (2); sisters (2).

Family members talked about the uncertainty, stress and loss during the period, with Alf (a father) describing it as 'living hell, we didn't know where to turn.' Family members expressed feelings of anger and frustration as they felt a lack of overall consideration was given to their family by the criminal justice process and its staff, especially as far as prison was concerned, while another four said they felt much more help could have been offered. Families that did not have previous experience of the police and justice system talked about being 'shocked' and 'kept in the dark'. All family members said they had experienced feelings of grief and loss at various times during the whole process. At times

the loss was physical, as described by Maria, ‘they took my son away’, while for Eleanor it was about her son not being like his cousins anymore, ‘ my son is a criminal.’

I start this chapter by dealing with the major themes which emerged from the interviews. I then turn to a more ‘chronological’ account, taking the reader through the various stages of the journey as experienced by family members. As far as the ‘themes’ are concerned, four major issues emerged during my conversations with families over the impact of a member being found guilty:

- A feeling of being held responsible, blamed or a part of the problem by officials and community members.
- Embarrassment and shame arising from the family’s association with the justice system.
- Being isolated, uninformed and treated as insignificant or invisible by officials and community members.
- A sense that they were the most significant person(s) in the life of the participant, and needed to provide whatever support they could, regardless of the crime.

### *Responsibility and blame*

Eleven family members said that they felt they were responsible, or partly responsible for the participant’s crime by criminal justice officials, another family member or a friend. In seven cases, they experienced being directly blamed, or accused of being part of the problem. ‘How come you didn’t know what she was doing’? Bob was asked by the police regarding his wife’s charges. ‘You’re lucky we aren’t charging you’, Eleanor was told by

police as they arrested her son at the family home. Maria's daughter told her that her son's arrest 'would never have happened if he had been made to stay at home'. In cases where the participant had some form of mental illness, relatives felt that they were seen as not doing enough to help him or her remain out of the courts and prison, a task that Judith described as being 'too difficult, it's hard to be with him 24 hrs a day, he's a young man with an illness, not a child, and he does upset people at times, but that's not my fault, and it won't be fixed in prison'.

In describing her encounter with the questioning police officers, Paula told me that:

It just freaked me right out. We had been very civil and had invited them to come in and sit down. I had no idea initially of what they wanted, then they frigging started to ask me questions as though I was to blame for *his* actions. It was unforgivable! I had no idea of what he had been doing, and yet they insinuated that I was a part of his frigging crime.

Paula's partner had confirmed this in his interview:

They started on her as soon as they had an opportunity – I told them to leave her alone as she didn't know anything about what I had been doing and said that I was the one, not her. They settled down after a few moments but she really went for them as she was so upset by their line of questioning over my crime.

Paula said that later on, during the period leading up to his final court appearance, her husband was: 'taking his anger and frustration with the system out on me'. She stated that she felt he would at times 'blame me for his actions and circumstances, something I wouldn't ever consider taking on board'.

Jacob's sense of responsibility for his young son's actions were said to be compounded by his partner:

I felt it was partly my fault - which was reinforced by my wife. She kept telling me that he would not be in this situation if I had given him more support. He had really pissed me off, often aloof, never said where he was going. We didn't like

the guy he started to hang around with and then came the flashy car, the women and the drinking. His lifestyle was becoming very much different from ours. My wife had asked me to sit down with him and explain how we felt, but it came out wrong. Next thing we knew the shit hit the fan and the police were here (Jacob).

Alf talked about his frustration with the court, telling me that, 'I'm over seventy and yet the court reminded me that he needs to be kept under control. The police can't, the hospital can't, so who on earth does the judge think I am?' He went on to say that he was very tired, angry and annoyed with the whole system. 'We're too old to manage his behaviour'. In a situation in which they had struggled for years, he found that:

We've even been blamed for the situation we are in as it's a mess of mental illness, drugs and crime that even the court can't fix. They don't want to lock him up anywhere, so the wife and I have to look after him. When things get out of hand they seem to blame us. What can we do? The house is now more like a prison than a home – for all of us (Alf).

While being blamed by others was a common experience for family members, Eleanor and Jacob experienced blaming themselves. Jacob: 'Yes, I guess I still feel that I could have done more to guide him away from the path that he eventually went down'. Eleanor questioned herself over the period of her son's connection with the system;

Looking back, here was my son in court then prison, and I couldn't go anywhere near to the place as I was so embarrassed and afraid -I left him to fend for himself. Could I have helped him more, yes I think so, especially in the early days when I saw him going off the rails.

### *Embarrassment, shame and loss*

At least ten family members recounted acute feelings of embarrassment and shame at various times during their association with the justice system. Eleanor said that she arrived at the police station feeling, 'very upset and dreading the day that I would have to do this, I was just so ashamed. It was so humiliating having to stand there late at night,

admitting that it was my son - I so wanted to take him home'. Similarly, Linda found the task of attending the police station very embarrassing:

I had to ask for help from the family to go with me to the East Perth lock-up. When I found out that they had arrested him I found it all so difficult I didn't know where to turn. I called my brother-in-law, telling him exactly what had happened. I felt very ashamed and embarrassed down there; it was really horrible for me. They told me about his charges as though I should know, and asked me many personal questions about our life. Then I had to sit in the foyer with my brother-in-law and wait until they had processed my husband. Everyone that walked in or came past me stared at me. It was though they all knew something that I didn't know and a real strange feeling came over me. I will never forget that night.

Deidre told me that her partner's crime was high profile, with:

...lots of media coverage that really affected both of our families, but especially our children. We saw, heard and read about him every day in the newspaper for a whole week, and spent time trying to avoid all of our friends. The children were mortified by events, and I couldn't even pick up the phone I was so ashamed.

Similarly, Judith spoke of the trauma of the family's emotional attendance at court when they come face to face with her brother's aged victim.

It was overwhelming; I just stood there and couldn't speak. The police woman just stared at us as they walked past to enter the court, and I had to hold my mothers arm for support. I thought to myself, 'how could you do this.' When they brought my brother from prison into the courtroom I felt like hiding my face, I was so ashamed, I couldn't look at him or his victim, I was angry, I felt letdown, and real sorry for what had happened. As soon as he was sentenced I got out of there with my mother as quickly as possible, and never want to experience that ever again. All I can think of is this elderly lady.

Further to this, twelve family members spoke of their worries not only about facing the justice system but also other family members and friends. Marina described how her family were, '... really shocked and ashamed, especially when I had to ask our family friend and lawyer to represent our brother. We never had trouble in all of our lives and he does this – how embarrassing for us'. Maria, her mother, agreed stating: 'my best friend

she says to me outside “what happened to him, such a lovely boy, why this stuff in the newspaper?” I couldn’t answer - I just cried and had to come home’.

All families spoke of their significant sense of loss. This could affect them at any stage during the process, be it following the arrest or whilst the family member was in prison. At times it was simply the knowledge that things were not the same any more. Paula recalls, ‘I know it sounds a bit silly, but I feel as though we lost our innocence when he was charged. Everything was always so right until then, well that’s how I saw it, it’s now no longer the same’. She told me how following her partner’s imprisonment:

I came home each day and cried myself to sleep, it was too much some days, and everything I touched, every little thing from breakfast time to going to bed just reminded me of him (Paula).

Sharene explained how her sense of loss was compounded by the fact that her young children did not understand why their father was unable to be with them.

There’s a big hole in my life whenever he goes in. It makes me mad, and the kids don’t really understand. I get really lonely and down for a long while. They don’t know why he can’t come home with us when we leave the prison and for the rest of the day they just keep on at me. What can I say? They are just too young to understand, even I find it too much to talk about, and when they go to bed I’m left with nothing. My Mum is there for us but how many times a day can I ring her?

Alf described how he experienced not only the loss of his son from the family home, but a ‘complete loss of the family’. Alf told me how:

The wife she gets very down when he isn’t here, and then when we visit him when he’s at the hospital she gets upset again. We both know it’s blooming difficult for him to live an ordinary life but we face the same fate. Our lives are upside down. We now have a different life to what it was ten years ago and we never know what to expect any more. We’ve lost the farm, - his brother won’t come here while he’s like he is, - we lost a whole lot of blooming cash when he took it from the accounts, I could go on all day. We don’t have the same kind of life now; it’s been a complete loss of the family, that’s how I see it.

Linda described losing her privacy as she went through her husband's bail application and the interview. She felt very hurt inside:

...right deep inside of me and I just didn't know what to do or say. I was angry with the world, ashamed of being there in that place, embarrassed with it all, and thought 'why me'? A part of our private world had disappeared in those few minutes. I left that place feeling as though I had been assaulted, and asking myself, what must they think of me?

*Isolated, uninformed and invisible*

Eleven family members talked of times when they felt 'isolated', 'uninformed', and treated as 'insignificant' or 'invisible'. Crucially, this included feelings of being ignored by the participants as well as the system itself. Four said these experiences arose both from the system and the participant, four from the participant alone, and another three concentrated solely on the system.

As far as relations with the participant were concerned, Martha commented that 'not being informed of events by my son left me feeling isolated, of being a poor mother. I was very angry with him'. She said that communicating with her son 'became extremely difficult, he tended not to want to tell me anything until he really had to'.

Every time I asked him if he could tell us what was wrong he answered abruptly and accused me of interfering. I had a feeling that something was happening but thought of it in terms of a bad debt, outstanding payment for his car, or something going on with his girlfriend. I had absolutely no idea that he was involved in anything illegal, not a clue. We were shocked at his arrest, and I felt so angry with him for keeping us in the dark, when we had asked him so many times what was going on. We blame ourselves for much of this as we should have seen the writing on the wall so to speak (Martha).

Judith said her brother 'kept us all in the dark – he knew he had fucked up but wouldn't tell us until it was almost too late to help – when he thought he was going to jail instead

of hospital'. Judith also expressed feelings of frustration with the courts and prison system:

They didn't tell us where he was going, how long he would be there, or what we had to do if anything. We didn't have a lawyer to start with and it was all very new to us, we were used to the clinic and the closed ward.

Alf speaks about his experience of being 'let down by the blooming lot of them – my son, the courts, the whole blooming justice system'. He said that he felt 'left in the dark' first by his son, then by the courts.

The courts were the worst, they didn't want to hear from me and the wife - not until they couldn't get him put anywhere – then they realised we were all that he had, and all that there was out there for him. Mind you they still didn't tell us what they were doing to help (Alf).

Paula, one of the three who concentrated solely on the system, said that:

They didn't appear to really care about me at all. I went to the remand prison where he was being held prior to sentencing, and they failed to give me any advice about how long he would be kept there, where he would go next, what was planned for him and so forth. They actually said that I would be informed later, but later never came. No one told me anything, I had to continually ask questions.

Similarly Bob spoke about not being able to speak the police or the lawyer during his wife's encounter with the criminal justice system:

All I wanted was to make sure that she wasn't being charged with some bullshit stuff, and that she would be well represented, that's all. The lawyer was in too much of a rush on both days to even let us know what was happening. It was all over in a flash with a big bill to pay, a fine to fix up and a wife who still didn't understand why she had been charged in the first place.

Michael too spoke of feelings of frustration and isolation. He stated that leading up to his daughter's trial:

Neither the police nor the lawyers asked me for any background information about her life, and when I went to tell them they didn't seem to want to know. Her crime was related to her past, and she was too embarrassed to tell them about it. She left it up to me, and I was unable do a thing for her. She was an adult yes, just, but like a lamb to the slaughter in there, she was not mature enough to cope



with it all, and this was her first offence. She didn't get the support she really needed as they kept me away from her, although she asked for me to be there with her most of the time.

*Feeling significant, trying to help*

All family members considered themselves to be important or significant people in the participants' lives. Allied to this, they wanted to give whatever help they could, yet in turn this frequently placed stress on relationships within the family. Eleanor experienced: 'a really bad period with him just before he first went inside, he was out of control, on drugs and lying to us all, but we still wanted to give what help we could'. Jacob, who had 'experienced mixed feelings' at his son's charges, said 'I was pissed off, other times I could just sit and cry'. He recounted how 'we were there for him as he began to seek our help and assistance'. He also described feeling very supportive of his son as he was arrested and taken to the police station. 'The first thing I did was ring our lawyer; I felt helpless but wanted to do all I could. I wanted to be a good father, to protect my son, I felt as though I may have let him down'.

In her turn, Paula remembered how she had remained 'determined to stay by him' as her husband's charges 'appeared on every TV station and newspaper'.

We have always been there for each other, now it was my turn to help out, and although I rather not have had this experience, it happened to us. Sure I called him a bloody idiot, stupid and lots of other names, for doing what he did, but I was determined not to have this situation, including the prison sentence stop us from loving each other (Paula).

Marina described the period from her brother's arrest to him going to court as 'a time of trying to be helpful while not knowing what to do'. She said that she and her family felt ashamed at her brother's crime, but 'we were never going to give up on him':

It was really stressful. We didn't know what to do to help him. We could see that the burden of the case was getting to him, but it was also affecting us all. We just prayed everyday that things would work out for him in the end, and they did eventually. I think we all just hung in there for him.

Jane said that she 'just wanted to be there' for her brother. Visiting him in prison every week of his four year period, Jane recalled: 'I was there for him when he went into court then prison. I didn't ask questions, just sat and talked about family, the kids, everything'.

Maria recalled how she felt that she needed to be there for her son at the time of his arrest:

I not know anything about what he done. Police they come here and look everywhere, chooks, shed, garage, they ask me but I not know what to say. He's my boy, what I tell them? I say he's good boy really he not do harm. I get upset for him you know when they take him away.

Feelings of responsibility, shame, loss, isolation and the need to help thus underpinned the families' accounts. With this in mind, I now turn to the journey of events as experienced by family members, keeping as close as possible to the chronology described by the primary participants.

### **The initial contact**

Ten families had not had previous experience with the criminal justice system, and for them shock, embarrassment and loss were particularly acute. When the police arrived at her family home with a search and enter warrant, Eleanor recounted that:

I was in total shock, I knew that he was in some kind of trouble and had given us concern, but when two police cars arrived in the driveway I thought I was going to die. I started to blame myself for not putting him right - I should have helped I know. Within half an hour he was gone. They had taken my son away.

Similarly, Maria described the shock of police arriving and asking her questions, then taking her son away for further enquiries:

The police they come to our house and look for something, then say 'we take him with us he be alright and come home soon'. I know nothing what he done. I sit and cry, ring my Marina, and she come home. I very sad for him he stupid I tell him. We all not understand why he do this.

Paula commented that:

It was all a bit of a frigging shock as he had only told me the day before and I was trying to get my head around it all. I felt like holding him and telling him that it will all be alright, but deep down I think we both knew that this was going to be bigger than Ben Hur. While the police were there, and at the station I was able to put on a brave face, and gave them all a frigging hard time I think. After the charges were laid we came home again, and just cried. It was a terrible day, but I knew that I would need to be strong for both of us.

For Deidre, who had never experienced the criminal justice system prior to her husband's arrest:

It was all too much all of a sudden. I had to tackle the private school and their comments, followed by a falling out with a company director. I found that I needed to be strong and to take the fight up to them as he was finding it too much at the time.

Bob described how he felt shocked and helpless when his wife contacted him from the police station after her arrest where 'she spent over four hours before she could phone me at home, and all of this time I was worried sick over her, I just wanted her to be all right, to come home'.

Four families had had previous experience of a close relative entering the criminal justice system, although this did not necessarily prepare them for the next charge or arrest. For these families the trauma of the arrest and charges remained evident, as reflected in Alf's comment:

We are old friends with the courts, even the Supreme Court, and yet we find it not only daunting but very frustrating for us. We still don't blooming know what to expect when he is in trouble as it can range from a sudden arrest in the city, to the police calling around home and no charges being laid. We never know if he will go to jail, hospital or the special clinic, and we are the last to know most of the time. For us it's a blooming nightmare.

Sharene found that the previous experience provided her with some strength, as she had previously coped with the loss of her partner. Against this, it also warned her that things were likely to turn bad again:

He goes in for a year, maybe more, then we have a time of re-settling when he gets out. All is hunky-dory for a few months until he gets into bad company again. It's then that I start to get the feeling that he's going down. A small job here, bad mates around, a bigger job there. It builds up and then the bubble bursts. Me and the kids get left again after the cops come in, take shit loads of crap away, and leave me to it.

### **The court**

My heart sunk as he was found guilty (Jacob).

As family members waited for their day in court, either for sentencing or for their trial, they experienced considerable stress and anxiety. For Marina:

Mum and us kids were really stressed out as we all waited for him to go to court for his sentencing. I had been twice with him before but this was so much more scarier for us all, a really big day for him too I know. Mum wouldn't go, she was really sick, physically ill by then with worry, but I had to go and take her place. Driving in I thought I would die if he gets a jail sentence, what would I tell Mum, how we all could cope with her and with him. I was really stressed I tell you, really stressed out I felt sick.

Reporting that she experienced 'so many traumas over my son prior to going to court', Eleanor was unable to attend her son's sentencing:

...through living with so much fear and turmoil, I had hoped against hope that the worst would not come - but it did and I just could not bring myself to be there at the [police] station or the courts. I was so fearful of the consequences, very embarrassed by his behaviour of course, and was just plain scared of what may happen to him.

Bob, like many family members, went to the court and found it ‘upsetting to see a loved one standing there’. He said that the court: ‘didn’t seem to worry too much about my wife, and it was like she didn’t really count. All she had to do was stand and plead guilty and take the fine. We were pretty stressed by it all and not knowing what to do. It was all doom and gloom for us both, a dreadfully embarrassing day we won’t forget in a hurry’. In his turn, Jacob recalled the day in court when his son was found guilty, and his associated mixed feelings. ‘I can tell you I was still pissed off with him, even the morning of the court, he had fucked up and tarnished the family name, but when I get into the court, well, then he was just my son’. Jacob recounted:

I couldn’t think of anything else except what was going to happen to him. I couldn’t look at him or the jury, and I didn’t fully understand the sentence. I hadn’t been told what to expect and it was such a shock and such a feeling of oh no what can I do, what next. I felt my world had just collapsed and of course I felt terribly guilty throughout it all. I still think, would it have been different if I had spent more time with him.

Paula said that she ‘wanted to stay with him and that our marriage was strong, but I didn’t expect this agonising time to affect me so much’. In a similar fashion, Silvia said that while going to and from court with her partner was stressful, she continued to do this as he was still under medical advice and she felt that he needed her support. She remembered that:

...we were both very upset. I did get angry at times, and wanted to say ‘stuff you, you got yourself into this,’ but I managed to calm myself down and go through it with him. I don’t know if I could ever do it again though as it took so much out of me and our relationship.

Finally, Jane who moved from the family home in the country to live nearer to the remand prison and court during her brother’s trial, remembered that the experience; ‘...was like a bad dream, because we were close him and me, he was bad at times, but he

was gone and wouldn't have family with him. I missed him real bad, you know, it didn't seem fair he was gone away so long'.

These stresses were compounded by the presence of the media. Deidre described how when she left the court after her husband's trial:

I was approached by the media for a statement but the lawyer asked them to leave us alone. Reading his name in the paper the next day, with details of what was said made me feel ill, and the T.V. clips were too much, it's all too much to think of even now, it was very humiliating for all of us. The whole experience was just so dreadful for me and placed our whole relationship under a cloud for months to follow.

## **Prison**

While eleven of the eighteen participants experienced prison, only seven family members provided comments on the impact of the sentence on the family. This was because in two cases I was not given permission by participants to contact their families, and I was unable to locate members of another family.

Although all family members felt negatively about the experience, describing it as 'terrifying', 'lonely', and 'a waste of time', two people stated that they in fact felt 'some relief' and 'less stressed' during the period. Sharene recounted:

...after all of the court shit, we settled down, and at least we knew where he was when we got to bed at night, wow that sounds really bad but it's true, and I told him so, he fucking stressed us all out with his bullshit before he went in.

Jane also experienced less pressure in her life following her brother's sentence. 'We were glad he didn't get longer, that the court thing was over. We knew where he was then, when he would be out'.

More generally family members spoke of imprisonment as a very unpleasant time, with relationships and plans on hold, and a time when they experienced loss, fear, isolation and embarrassment. Eleanor recalled:

The time he spent in prison affected me more than it did him I think. I'm still terrified of it, thinking of how appalling it all was, the treatment and lack of dignity, the fights he got into, the trouble I had with getting him started on education, and trying to get some sense into him. He no longer cares about going in to that horrible place; in fact I think he's worse since then, not caring at all about it. That's my remaining nightmare, to have to go into that place again, especially when it makes me feel very ashamed as a mother.

For Paula:

The prolonged pressure did make its mark. We often had a few words, and on more than one occasion I had to be firm and let him know that I was not to blame for his actions. I had done nothing wrong, so I didn't want him frigging blaming me, or taking his anger and frustration with the system out on me.

Jane remembered how (even if she knew where her brother was) she'd return from a visit:

... and just sit and think about it, what he said, what I said, what he wanted me to do for him next week and all that, it made me sad, I wanted to be there for him 'cause I knew he was sad.

All family members said they were deeply fearful for their relative's safety and well being while in prison. Judith thought about 'rape, bashings and everything, and I just felt for him in there'. Deidre worried 'over what it was doing to his state of mind, as I saw him getting really down on two occasions, but the worst scare was when he was taken ill one afternoon and they rang me to let me know he was going to hospital, then I thought, Shit! He may die in there'. When Linda's partner was imprisoned:

His health deteriorated, he lost weight, grew more impatient and frustrated with me and the family, and we had no answer, no help, and no one seemed to care. I was totally humiliated asking for help. I was worried about him day and night, couldn't get answers from the system about his treatment, and ended up asking a politician to help us, and don't tell me that's not embarrassing. I had to go over

all of the facts, and I felt like I was begging. They didn't just put him in jail, it felt as though they took total control over my life as well.

Four family members explicitly said that they were worried that their relative would return to prison. Sharene 'dreaded seeing him leave me and the kids, four times in the past seven years he's gone in .... The kids and me are all frightened that he will go in again as soon as he gets out'. For Deidre 'it's this fear I get when I think of him going back there, and the thought of that kills me'. Eleanor was 'worried sick about him getting into more and more trouble, and for me having to face that dreadful place again'. Alf saw it slightly differently:

I sometimes blooming well wish it was me locked away; at least I wouldn't have the stress of him regularly going through the courts, mental health services and rehab places at my age. Our house is like a blooming prison, we can't leave him alone for too long, and we have to give him his medication, take care of his money and do all of the things to try to keep him out of jail. That's our whole time spent, and I just keep wishing that one of us goes [dies] soon, as I can't blooming well keep going on like this.

In thinking about the effect of prison, family members were uniformly negative. For Deirdre, prison was a 'waste of time, it didn't do anything for him, us or the children except place us all in the same position with our lives on hold. I feel that he came out with less fear of the courts, less tolerance and much angrier with society'. In a similar way, Paula stressed that:

It was no thanks to the prison that he survived his time, but that he has always gotten on well with everyone, and always willing to lend a hand. They didn't get him on any programme, or ask him what he thought he needed to help him back into life outside, frigging nothing, not a thing, what are they, aren't they required to do something for you?

Prison was seen as particularly problematic where issues of mental health were concerned. Alf stated that:

It's all too much for me, I can't blooming well understand their logic. When we ask for help there isn't any, and when we say to the court that prison doesn't work, they don't listen. I don't really care any more, we know that he needs help,



so does the clinic, and we get blamed when he blooming well messes up. I tell you we can't win.

Judith also felt that the system completely failed her brother, stating that:

They gave him a fucking prison sentence when all he needed was help with his mental health shit, and someone talking to him about recreational drugs and stuff. He knows the two don't mix and got into some bad gear, and that's when he offended. He's not a shit or anything, he does things that most of us would think twice about doing that's all, but the fucking prison couldn't even sort that out. He couldn't do the drug court thing because of his mental illness, so he was totally fucked by the system. Now he has to go to the clinic, where the court should have sent him earlier.

### **Release from custody**

Family members experienced a range of feelings about their relative's return from prison either for parole, final release, during home leave or work release. These covered the gamut from feeling of 'it was really fantastic' to 'nightmare'.

For Paula, the experience was 'a genuine mixture of thank God its all frigging over, to, Oh my God, he hasn't been here for so long, what if he wants to change everything, what will I do?' She recounted how:

The first evening together was like we were in our twenties again and I felt so very happy. I had been so frigging busy whilst he was away that I think that I kinda just got used to sitting watching the TV on my own, or going off to bed with a book. I was just so nice, in fact it still is. Sure there were days when we had words, but don't we all? I shouldn't have worried so much you know, everything went so well really, and look at us, we did more than survive.

Linda also said it was good to have her husband back home:

I was so relieved at having him home again, I had really missed him being around, and he really did need good medical treatment. I too had lost weight with the stress and worry, and just needed him to be back here with me. He still doesn't work and probably never will again, but it's better than him being in there where they neglected him.

On the other hand, Eleanor recalled the first few months following her son's release as 'an absolute nightmare'.

I was so pleased to see him when he arrived home, as throughout his sentence I longed for us to be one family again. Stupid wasn't it? As soon as he stepped inside the door, it all started again, bossing his young brother around, telling me what to do and to mind my own business. He was always a real bully, but now much worse. We never knew where he was or what he was up to, as he was on parole and supposed to be home here at night. I had no idea of what yarn he was spinning to his parole officer, because she never returned a phone call. He had lost his licence and yet he took my car out on several occasions, until I started to hide the keys. The local police were regular visitors to the house, and tried to be helpful to him and all of us. After that last time he made his brother drive him around. It took him over six months to settle down into being human again, and for us to begin to talk like a family. Of course, now after a year of being out, things are much better, he had to move out to his girl-friend's place though, and he does have a job of sorts. He still owes a lot of money in fines, and yes, I still wake at night worrying about him, thinking of that place, and what we have gone through.

In remembering the first day of her brother's release Judith recalled the real difficulties facing every family member:

It was such a fucking experience, really. First they kept me waiting for nearly two hours while they got him ready, and then after we loaded all of his shit into my car, we were able to leave the prison and drive home to Mum and Dad. It was really weird, none of us really knew what to expect, or what to say for the first hour or so, until lunch time. Slowly we talked about different people, but really the first day was just like when he was on day-release from the fucking ward. Later that night Dad and the boys had a long chat, and seemed to rekindle their hopes and dreams, while Mum and I went into the garden where Mum just stood and cried. I felt so absolutely fucking sad for her, especially when she started to say that she didn't think that he cared about her. She was a real mess. I think that it took several weeks for him to settle down back into life with us all, and we each had to handle the situation in our own way.

She concluded that:

I don't think it will ever be the same again though, as prison did fuck-all for him or us, except leave a scar, in fact he nowadays needs more support and medication. It's fucked really (Judith).

As we have seen, these feelings were echoed by others, making their relative's release from prison more difficult for family members. Eleanor said that she had 'expected that the prison would give him some sort of help really, but looking back it was a waste of

time, it didn't help him sort himself out, and certainly didn't make him a better person'. She also commented that 'yes he needed to know that he can't do what he did and get away with it, but just look at what it's done to him putting him in there, they have made him worse, it had the wrong effect on him I know'. More mildly, Alf believed that prison, 'should have offered more support', and in a similar vein, Paula felt that her husband, 'was not encouraged to do something useful with his time and what he was asked to do had no bearing upon his or our future'.

### **Concluding Comments**

How fair did family members find the justice system? Overall, the answer to this is negative. Witnessing many of the justice system's interaction with their relative, family members were in close proximity to events to argue convincingly that procedural fairness was lacking. The majority (10) thought the sentence itself was unjustified or inappropriate. Of the seven family members who commented specifically on the prison sentence, five felt the sentence was too harsh, too long or inappropriate. Two specifically commented that prison was not the place to send people with a mental illness. Thus, Linda argued that her husband's conviction and sentence was, 'much too long, especially with his health condition, it seemed as though he was doubly punished, and look at him now, after no proper medical care for eighteen months'. While Paula asked:

Why prison though, he has always been harmless, a frigging good telling off by the judge was all it took to put the fear of God into him. What he got was too frigging harsh by any standard; they could have suspended it for a couple [of years] maybe.

Another factor contributing to these feelings of injustice related to the treatment family members themselves received. As stated earlier, several family members felt that they

were being held at least partly responsible for the participant's crime. This contributed to a belief that the system was against them and therefore unfair. The impact of this was explained by Marina. 'It was like being treated as a criminal because it felt like we were being blamed as well, right from day one'. Jacob similarly said that he felt that the process was 'fixed right from the start'.

Overall, family members felt excluded from the criminal justice process, and ignored by those with an interest in rehabilitation. Only three reported being asked to assist the police with enquiries regarding alibis or by providing a statement. During the court most family members were observers, with only one family member giving evidence for the defence. At worst they spoke of as being treated as though they were the co-accused. Families with a relative in prison felt isolated from any decisions about the individual that impacted upon the family's future, unless release was imminent, at which time they believed that they were being further judged by the system. For families of a relative given a community sentence, or paroled, the reality was little or no support. In fact they described being 'isolated,' 'invisible,' and 'kept in the dark.' For most families, the weight of the system upon their relative was experienced as 'traumatic,' 'worrisome' and 'a fucking nightmare.' Alf summed it up succinctly, 'we are drowning in a sea of police, courts, drugs and jail, without any hope of rescue'.

Although feeling blamed, marginalised and accused, families showed a remarkable level of resilience and determination in the face of a justice system with a limited focus on families. By and large the families I interviewed believed that their support to the relative

was crucial and, although they felt excluded by the system (and at times by their relative), the vast majority continued to provide support when and where they could. Support ranged from attending court hearings and providing surety, to depositing money into the prisoner's account and trying to assist with them many issues which followed conviction.

In the next chapter I turn once again to the participants themselves, focussing on the consequences of their connection with the criminal justice system, including issues relating to relationships, employment, housing and income. Further, I examine how the whole process affected their sense of self.

## Chapter 7

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### **Guilty as charged: material, social and personal consequences.**

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One minute I was me, wife and children, family home. Next, unemployed, friends mostly gone, wife very concerned, and me left with an empty feeling that soon changed to anger and frustration....I became a grumpy old bastard overnight. Change came about very fast for me and the family (Clive).

This chapter returns to the participants themselves and focuses on the material, social and personal consequences of their arrest and conviction. I begin with economic issues, including the difficulties faced by participants as they sought employment, safe and secure housing and adequate income. I next explore participants' social and intimate relations and the difficulties experienced when re-connecting with family and significant others. This is followed by a section in which I draw together participants' reflections on how the whole process affected their sense of self. I conclude with participants' accounts on how they managed these consequences. It was clear that participants' connection with the criminal justice system permeated their entire lives. Accordingly, it is difficult to separate the economic from the social and the social from the self. So dividing matters up this way is to a large extent artificial. It does, however, serve as a useful analytical device and helps to illustrate the cumulative impact of the criminal justice system.

In describing these consequences, I am not implying that the difficulties are all a direct result of the participants' connection with the criminal justice system as many participants had experienced lifestyle crises and trauma in previous circumstances. I do, however, suggest that journeying through the system made situations much more difficult, often bringing crises and trauma to the surface.

**Economic consequences**

The process of arrest through to conviction had marked economic consequences for most participants. Not one person continued to work for the same employer after being declared guilty by the court and only one returned to work in the same field as prior to sentencing.

Seven participants experienced major economic instability almost immediately the process was set in motion. They reported losing their employment as soon as they were charged, although only three of them had charges that related specifically to their workplace. This reduced their capacity for choice, affected their quality of life and, enforced dependency upon welfare. Three had to rely upon family for financial support during the period.

Whilst fifteen participants were unemployed at the time of sentencing, thirteen had had some form of work up to three months prior to being charged. Nine stated that they now consider themselves to be long-term unemployed unlikely to rejoin the workforce in the foreseeable future, although they all wish to have full-time work. Against this, only four spoke of having regular employment since completing their sentences. Three others have begun to study with two of these working part-time. The remaining two report that they are in receipt of a disability pension.

In all, twelve participants were dependent on social security benefits, in some shape of form (Disability Pension, Austudy or Newstart allowances) at the time of the interview.

They spoke of struggling to cover the costs of ordinary living, of not being able to keep their vehicles roadworthy and of continuing to have basic health costs they couldn't meet. Four specifically said that they couldn't cover personal, home, and vehicle insurances, and five did not contribute any longer to their superannuation funds. Women in particular found the economic outlook bleak as they became reliant upon male partners who controlled domestic finances.

### *Difficulties in obtaining work*

With the exception of Sandra who was fully occupied as a sole parent, obtaining employment was a major issue for all participants. Not only did they face the difficulties of finding work consequent on holding a criminal conviction but they also had to explain their situation to everyone from CentreLink staff to job network agencies and prospective employers. Although often having competencies and skills adequate to perform the tasks required, they found they were consistently turned down. Guru spent 'fucking months looking for work' while Clive asked 'who is going to employ me? Every time I apply for a job it's "we need a police clearance"'.

Francis, who spent twelve months unemployed between his arrest and his trial, described this period as more harmful and stressful to his family than the period of being away in prison. He thought of it as a 'black hole' and a 'wasted time in my life'.

It's the wasted time in my life that really still gets to me, the black hole that absorbed everything that we did. All of our energy was spent around me being unemployed, the court, and how we would manage our future. I still believe that the time was the most harmful to us, even worse than the time I spent in prison. When I got sentenced I regained some direction, a bit of a relief in a way for us all to know what was happening to me. We had planned for my time away so



that made it a little easier to accept, whereas I never expected the charges, or a period of unemployment.

In many cases, the stigma of being unemployed compounded the stigma of conviction.

Keith recounted:

I know that even as I went to court I was said by the media to be unemployed. It sounded bad. That was the first time that I had ever been called that, and it ended up as a sentence as bad as my jail term really....I became desperate at times throughout that time of change, and much of that remains with me today, as I still think of it all....I wear the shame and scars of imprisonment and criminal convictions that will always be with me, no matter where I venture, a job interview, bank loan.

More positively Guru recounted that he had found full-time work, while Emma worked casual or at times part-time. Initially, the change had been very unsettling. In Guru's case, for example:

It's working out well now but it was fucked before that. Going from having a good job into the fucking justice system for 18 months and then jail, put me behind and a gave me a fucking feeling of not being in the right place for a while. I still want to have more security in the business, but I can't complain, at least I feel like I've got a future again, even though most of our contacts are through ex-crims. It's been a fucking slow process of getting on top of it all again compared with the fucking way that I sped downhill fast.

Prince was the only participant who eventually found employment in the same field of work as prior to sentencing. This was after 16 months of unemployment following his release from prison. His is one of the very few positive accounts. Having spoken of the difficulties both he and his family faced, he recounted that:

Now I can see the big picture, and I have come through it very well I reckon. I've got a very good job that gives me back my life as it was, my family are here, and I have won my respect back.

### *Housing*

Despite various bank debts, Francis, Clive, Prince and Keith were all able to return to their family homes following their period of imprisonment. Clive and Keith were able to use their superannuation to maintain the family home whilst they were incarcerated and all four, like Prince, had partners who were employed. Although Ronald sold his house due to financial pressure, his assets provided him with income security. Upon release, Guru left the family home to live with his girl friend while the opposite occurred to Sidney who moved back into his parent's house. Stanley, while struggling with debt, continued to live with his fiancé in their rental home.

Women experienced more difficulty than men when it came to safe and secure housing and most lived in vulnerable housing situations that involved domestic violence. They had, in the main, to rely upon their relationship with current partners or associates for accommodation. With the exception of Lyn, they did not have the financial security to cover the costs of rental bonds for a home of their own and three had continuing debts with Homeswest, as well as previous hire-purchase debts. Lyn and Sandra were the only women who described the places they lived in following sentencing, as 'safe'. However, Sandra then had to move into a smaller unit while Lyn sold her house within six months of her sentence.

Lill, Karyn and Noni all faced unsafe domestic situations when they were released from custody. Although they said they made the choice to return to the house in question, in reality they had no other options as their children were living there. All three experienced

social and economic difficulties upon return from prison and all three indicated that they were well accustomed to domestic violence both personally and among their acquaintances. They expressed concern about having their children with them as they moved from place to place, at times working on the streets and squatting among other drug users. Released in mid winter, Lill spoke of the lack of heating, food, and how she felt a stranger in her own place:

When I got out I felt so different, as though I had lost touch with them both 'cause so much had fucking changed in six months....it was a shock when I got home. The first few days I felt like a stranger in the place. It didn't feel like home, but they tried real hard for me. It didn't feel good then - and today, fuck, it makes me lost with what to do for us. Its fucking sad really isn't it? I thought I was going home to warm and cosy not fucking cold and unpleasant for us all.

Karyn recounted how she usually has no money and only an address to go to when leaving prison, and little information about the house or living arrangements until she arrived at the door. She also talked about the instability and violence of her relationships, reflecting that:

Three relationships in four stretches is frightening when you are facing the next one. I don't know why... it just happens... we fight, and then I leave.... Somehow I pick up another, usually while I'm inside, from connections, friends, yeh some friends eh? They all visit me and make promises, and look what I get, fuck all apart from more trouble.

Emma too, faced major upheaval and instability after her conviction 'I had to find another job... a place, then another room mate....It all came to me so quickly'. In Trendy's case something worse was involved. For her it was a matter of living among squats, staying with a dealer or going into a shelter for a few nights. She couldn't find work and had been breached by CentreLink, so was unable to claim benefits, relying on welfare services to survive. According to Trendy, little assistance materialised:

They didn't fucking help with a place, food or fuck-all, just fucking papers to say report at this fucking place within 72 fucking hours. How's that helping me eh?

In summary, many participants experienced economic consequences that they felt as bad as, or worse than, the sentence imposed by the court. Long term unemployment, losing a family home, surviving on welfare for the next ten to fifteen years and, for some, living on the streets or moving from squat to squat, these are severe consequences that may be experienced on top of the initial sentence. Lyn recounted how 'sometimes I just sit and think about what I used to be like, close friends, really happy at work, always had money, now look at me'. And, for Keith, there were major questions hanging over his future:

As for what will I do now, well! I won't be a high flyer again, my feet have been well grounded, and I have absolutely no influence in areas of my previous life. I have to rebuild all over again, from inside out.

And, in despair, Lill reports that she has to:

rely upon a couple of places to give us a hand to make it through the week, that's when I'm at my lowest and start to think about doing a job for someone, selling some gear or getting laid for a few bucks. It stinks I tell you. I just want to live like everyone else.

### **Social and intimate relations**

I lost many friends as either I pulled away from them or they left me once they heard about what happened. It was all too much for me really...done in such a way that it has changed my life forever. There were many days that I wished I was dead and I desperately prayed for help (Lyn).

The consequences for social and intimate relations were felt from the time of arrest onwards. These changes were described with a great deal of emotion, as participants reflected upon past family lifestyles and relationships, even if these had not necessarily always been pleasant or stable. When looking to the future, quality relationships were something all desired and hoped for.

Most participants felt their family relationships were placed under extreme stress by their arrest and the laying of charges, and that trust and closeness, sometimes already precarious, were further undermined. Clive spoke of his difficulties when faced with charges relating to his business practice:

Telling her about the charges and the company debt was the initial stress factor I think. I will never forget having to say to her that the police came into the office and took files away – then of course came back for me two days later. She asked me about it all, and what could I say? All I could tell her was what I had done - taxation requirements and investments were not in order, and that I had admitted this all to the police. I later pleaded not guilty as they loaded all of those other charges on me, but up to that point she was pretty well pissed off with me about it all. She stayed with her mum for several nights, and took the kids. I thought all was lost for a few days, and on reflection would say that it was the most difficult period of our marriage, for the children, and for a couple of close friendships with employees.

Jude, who was bitterly ashamed of his crime, felt that it had fractured, albeit not permanently, the trust between him and his family:

Mum and my sister couldn't believe what I had done, and they came to the lock-up and to the hearing the next morning. I guess they found it hard to understand what I had done, and I know they didn't trust me for a while after that.

Sometimes the accusations had the effect of pulling the family together – and, in so doing putting it under considerable stress – as a buffer against the outside world. Thus for Keith:

Not only did my life change but our whole family. My partner, as I said earlier, was very defensive when we were interviewed at home that night. We became very close and insular, I guess, when I think back. It almost had me in a whirl, I didn't know where to go for help, the personal stuff I mean.

Children were inevitably affected by their parent's encounter with the criminal justice system. They had to face the public criticism of their father or mother, and were often

drawn into the strained maelstrom of family relationships. Thus, for example, Clive talked about his daughter who had ‘hassles at home and school’, while Keith recognised that ‘....as for our son, well, it all got to him, although he took it in his stride and was a real asset to us during those days’. Later on Keith said that he and his son were ‘great mates now, but it took a great deal of relationship building to get to that stage’.

Parents who were incarcerated said their relationship with their children was emotionally draining and potentially damaging for all concerned. Francis described the period as ‘....a nightmare, we didn’t know what to say to each other half of the time...we often just sat with tears in our eyes’. Lill found it hard to cope with her partner and child when she returned home from prison and blamed herself for this:

When I got out I felt so different, as though I had lost touch with them both ‘cause so much had fucking changed in nine months. I know we spoke about shit and stuff when they visited, but it was a shock when I got home. I just want to live like everyone else....I can’t say what it’s done to me...while I love her, (her daughter) I can’t cope with it all and get very upset that I can’t fucking manage her when I’m off my tree....I want to be a really good mum and yet I need some fucking help. Look at me.

And for Karyn:

...when I see my daughters face, that’s it for me. What can I do for her when she looks at me like that? Her eyes question me and yet I haven’t got the answers, except to keep saying sorry, I won’t leave you again, and that I love you.

Many also felt that their children condemned them, at least initially, or for part of the time. Thus, for example, Clive recounted how:

They gave me hell, first of all they said that they missed me, then it all went downhill for a while. They were very angry at me for leaving them in all of the mess, and just about every time they visited me they would let me have it. At one stage they verbally attacked my wife for staying with me. They said that this had happened, or that one of their friends is not speaking to them, or the neighbour turned away. We asked the school counsellor to help but I felt that they got

worse for a while after that. Now of course they are great and have read all about the trial and the business stuff and have made their own mind up about me and the relationship they have with me.

What of participants' relationship to their own parents? In some cases, parental relations added to their stress, even when parents also provided support:

I haven't seen my Dad since my last lot of court shit. Then it was only time for him to give me another one of his talks about coming home, sorting this shit out and how much worry I give Mum. I don't need his fucking lectures, I fucking know I fucked up somewhere and would change my world if I could, but I always fail. I can't tell them how much I need the gear I take, and without it I can't get through the day (Noni).

I remember very well trying to explain it all to my father, and of course deep down wanted to let my Mum know, but that would have been the end of what is still a very poor relationship. (Emma)

I go home every Sunday night for dinner as that's all we can really handle of each other before there is friction. My past sits on my shoulder like a fucking monkey (Guru).

These difficulties were not experienced to such an extent between siblings, who could also be an important, if less complicated, form of support. Zach and Jude, both young men who lived with family, had sisters who were described as 'caring...very helpful' and who 'didn't want me getting into further trouble.' Zach said that his sister, 'came to court, helped me with getting into TAFE, and drove me around to the parole office and shit.' Jude spoke of his sister as being, 'very kind to me, she watched me carefully and helped me by sorting my medication and treatment out'.

As we have seen, the dread of telling family members, and the fear of what they would say, was one of the worst factors of the whole ordeal. Stanley and Sandra speak about this:

When I was caught I felt my world falling apart, not knowing what my family would say, my partner and mum and dad. I felt that I had let everyone down and that I couldn't live through it all (Stanley).

It was really upsetting to have to explain why I was doing what I was.... There was my son who still wanted all of the things he was used to, and my mum who needed my help. How do you begin to say that you've fucked up so badly? (Sandra)

The fact that close family members, particularly mothers and sisters, might be the individual's mainstay, only doubled participants' distress in having caused that person unhappiness. John and Guru both spoke in these terms:

Mum? She's okay again, but ....I've got no answers for her, but I'm sorry that I am like that, that's all I can say....Sure, yes every time I go in she's there, and then I have to stop and think about her. I'm a softy really, and I'll do anything for her, but I'm a crim and she knows it (John).

I went through hell those first weeks away inside, and it really hurt us all. Mum took it real bad and it made me sit and think about my life. I know I got what I deserved in some sense...I never wanted this to happen to our family especially Mum (Guru).

Finally, three participants, (Lill, Francis and Prince) all experienced the death of a relative while in custody. For Lill this was devastating:

I miss auntie, she was great to me, and to make it worse, I was inside when she died. Yes, I can still smell her perfume, and hear her speaking to me. Fuck, yeah I miss her and all of that time with her and can picture us all together chatting away.

### **Consequences for sense of self**

In the great majority of cases, the impact of the criminal justice system on participants' sense of self was overwhelmingly negative. As we have seen, participants experienced badly damaged identity and felt themselves judged, shamed and declared guilty. Although arrest and court proceedings were highly damaging, it was prison that provided the most harm, often perceived as difficult to repair. Most of this discussion will be devoted to these negative effects. But what of the few participants who experienced things differently and spoke of having been treated fairly and with respect by various



agents of the system? There were three such people and it is important that their story be told, so I start with them.

Those concerned are Stanley, Jude and Sandra. Each spoke of their experiences in reasonably favourable terms, identifying a level of fairness and justice, and expressing confidence in their future. At first glance, there is nothing particularly remarkable about their circumstances. All were aged under 30 years and all were convicted of reasonably serious offences. All, however, were first time offenders. Stanley, who was charged with stealing and fraud, received a two year term and served a supervision order. Sandra, charged with theft and burglary in company, was given a six year prison sentence, suspended for two years. Jude was convicted of assault, theft and drug use, given a community order, programme requirements, and required to pay compensation. Their family circumstances were markedly different. Sandra, a sole parent with a four year old son, lived near her mother, Stanley lived with his fiancé and Jude with his sister and parents.

Apart from Jude's initial contact with police where he said 'I was in a state [drug affected] but didn't like the way they were treating me', all said they received good treatment from officials. They commented positively on the level of support received from police, courts and family, and all three had some form of contact with their victims. They all expressed shame and remorse and all experienced support from close family relationships. They did not appear to suffer long term damage to their sense of self,

although all experienced immense emotional distress during their arrest and subsequent court appearances.

Stanley referred to his criminal activities as ‘something that stopped me from having an ordinary life, it was an addiction....and together with my illness, made life almost unbearable.’ He said that he found it difficult to seek help prior to being caught and he was trying to deal with mental illness and his addiction to crime:

I was out of control...it was my fault and I’m pleased that it’s over....I had to look at life differently, lower my stress and trust myself and my partner. It worked, and I’m glad I went through it all, otherwise God knows where I would be by now.

Jude described a sense of ‘hope and trust in myself’ following the court process and his communication with his victim. He spoke of being treated fairly by the courts and of receiving positive comments and support from his family, all of which provided a helpful platform for his future:

I asked to speak with my victim...and apologise for that day. My family went to see her on my behalf and I was very relieved when she accepted me as not being a bad young person. She gave me hope and trust in myself again. Before that I was very down, and I needed some help to get through the feelings of guilt that I had. The experience has left me feeling very supported by a loving family, after what I felt was a terrible time in my life.

Sandra also described being treated fairly and with dignity and respect. She reported that she had met with a great deal of understanding vital to her recovery and self image:

Others that I know have spoken about the courts as being a dreadful place, and that frightened me when I first went there....I never felt that I was labelled in any way, and only found the police and the court team very good to me. They always called me by my first name, asked if I was okay, talked about my family and my problems, and I’m sure that that helped me through it not to feel so depressed, and even supported. Mind you, sentencing day was very scary.

No single factor can explain why the personal outcomes for this group were so different from the rest of the participants. Instead a combination of interlocking factors seems to be at work. The fact that they were all first time offenders and prepared to 'own up' to their offences may have affected how the courts treated them. This, in its turn affected how the participants felt about the courts. Support from family members was crucial too, enabling the participant to go through with the process and take personal responsibility while feeling cared for as a human being. The space to contact victims and apologise to them was also important and, again, the first offence and relative youth factor may have had some bearing on victims' willingness to meet and accept apology. If, however, something goes wrong in this fragile chain then the whole process breaks down. And such was the case for the great majority (15) of those I interviewed.

In stark contrast to Sandra, Jude and Stanley's feeling that their conviction was, in some ways, a turning point, a rescue from a destructive lifestyle and their treatment fair and respectful, the other participants felt that the process surrounding their conviction had been extremely damaging and spoke with longing for a previous, happier past. Among this group, eleven were incarcerated (seven men and four women).

These participants spoke of being humiliated, intimidated and frustrated through a whole number of official processes. For them the police investigation, interview and interrogation, fingerprinting, DNA sampling, being given a file name and number, having their photograph taken and being given a summons to appear in court were discrete steps in a single nightmare. Thus, as alluded to in Chapter Five, Francis' experience of the police station was 'mostly of a humiliating and intimidating nature', while Emma was

‘frustrated, and really humiliated by them during the search’. Lyn’s words should also be recalled here:

I was petrified. I have never been so scared. Yes. I had to have my finger prints taken, and told to take off all of my jewellery. They took my photograph and videoed the interview, constantly referring to my actions as theft. I felt absolutely awful by this stage, no words can describe it to you. I just didn’t want to live. I was so humiliated by this time and I just wanted to die....I wanted my world to end there and then.

Those who went to prison not only endured the process of institutionalisation; wearing of a uniform, prisoner number and ID card and being allocated a security classification based upon their risk, crime, previous criminal record etc, but also the name-calling characteristic of prison culture:

They called me everything for more than two years. Now look at me see, it’s what they keep telling me that really gets to me mate. It fucking hurts I tell you see mate. Of course I feel fucking useless now, what can I do? ....see mate, I’m fucked see, I’m fucking useless now to everyone. That’s how I see myself at times mate....fucking useless (Ronald).

I’ve been called a fucking whore, a drug dealer (Karyn).

Clive, who had previously been a stockbroker recounted:

They asked me about my work on the outside and I told them about our business; stockbroking and accounting....I was then told to work in the kitchen. I was referred to as the Stockfucker, but unless you know that there are also animals on the farm, you may not get the serious connotations it had for me.

These processes had long term consequences which, for many, lasted way beyond release from custody:

After wearing green for four years I never go near the colour today, it reminds me of my time inside....friends still call it the green team (Keith).

As a result of imprisonment, many participants felt publicly shamed and doubted whether they would be accepted into mainstream society again. Earlier Francis indicated that he would 'cross the road and use the side streets' rather than risk meeting someone from the workplace. He spoke of being 'really ashamed' of what he had done, so that 'the thought of meeting someone who knew me was all too much'. In his turn Keith recounted:

My self esteem was nothing, and all I could think of was that I had let myself and everyone down, from work, family through to very good friends. I thought that I wasn't worthy of anything and that the best thing to do was not be around any more. I knew that I had brought a lot of harm to so many people, and that it was more than embarrassing- downright shameful. I felt that life wasn't worth living at times.

In Stanley's case social shame was clearly coupled, as it was for Keith, with a sense of personal guilt, a feeling that he himself had done 'the wrong thing.' This led to despair:

I knew that I did the wrong thing and just put my head in my hands, I felt really ashamed. I admitted to them what I had done, and then I just cried and went into a very depressed state. It's still horrible to speak about.

This subjection to blame and shame made Trendy long for 'space' and a 'new start' where she could experience 'respect' and where she was not seen as a 'bad' person:

It's all fucked, they see me as bad....I'm not as bad as they say am I? I'm sick of it if ya want the truth, fucking sick of being put down and trampled all over man, its fucked. I go here or there and get shit put on me by every fucking one, I wanna break from it all. I feel I need space right now to be where I don't know any fucking one, some kind of new fucking start, treated with respect.... I hope I'm not that bad, I don't wanna be bad man. I just wanna life that's all, away from that shit.

Three participants told me how they turned to their criminal peers and how this alleviated the harm visited upon them by 'straight' society. Here they could wear the label of 'criminal' with a certain sense of pride and heightened identity. They recounted how this bond had its own rituals, including hand-shakes, gestures and vocabulary. It was because

of this form of social connection Guru was able to say that he had ‘a fucking good idea of who I am right now.’ He continued:

I have changed to become a member of the honest criminal class – don’t laugh, now I’m stuck with it, and yet that’s where I get a feeling of acceptance. I’ve got our business going along well, - it’s all legit - and the boys at the club respect me. Down at the gym I’m seen as staunch because I’ve done my time. It’s only with Mum that I get those feelings of being ashamed of me and what I’m like....I feel good about myself otherwise.

John argued in a similar vein:

You can’t do jack shit with your life after that, so you make the best of it don’t you? You go to where you are trusted and thought of, and my record holds up well among friends, if you understand my meaning.

Overall, though, one of the most significant themes of those interviews, recurring again and again, was a desire for the previous, more ‘real’ or ‘essential’ self. Here participants repeatedly compared the self who had been charged, sentenced and damaged, with an inner self, referred to as ‘the real me’ or ‘the old me.’ Even those participants who had been involved in criminal activity over a long period recalled an earlier, previously untainted self. Many feared that they would never rediscover this older self, so great was the damage inflicted. The level of despair attendant on this was frequently revealed and I quote at length from several interviews.

....and I thought by now that it would have all gone away but it hasn’t, it’s a bit like a re-occurring dream, one that makes me scared and afraid of what is going to happen to me next. It leaves me worried about if I will find the real me again (Francis).

Whatever I do nowadays, I still can’t help think of the old me, the court stuff, and what could have been or even should have been. I know that it has really affected me in ways that I never imagined it could....I told you about the bank, but I mean real personal stuff, even to the extent of trusting myself to make the right judgements. I have some niggling thoughts about me, you know, the inner stuff ... where did I go wrong, will I ever get back on top of it all, what is going on in here (taps chest) where it hurts the most (Clive).

Sometimes I just sit and think about what I used to be like...then when I think about the court and all of the business with the police and the charges I get a pain inside of me. It's so bad at times that I feel I want to be sick....I long for the past at times, I mean before all of this happened to me (Lyn).

This life isn't something I want for the rest of my life, I don't want this scene, and when I think of me, the real me, I get pissed off with everyone and everything. Sometimes I just think of getting away from it all and creeping home into my old bed where I was always safe and warm, with the cat on the end of the bed, and mum in the kitchen. Yeah, if only (Lill).

Don't think I love myself 'cause I don't, I hate the fucking me I am, and yet I feel trapped. I wasn't fucking born like this.... Look at me as a kid, (shows a series of photos from about 15 -20 years ago) who would think I would end up like this? (Noni)

### **How participants coped**

Once you get into the swing of things you start to see that the system is against you so you have no choice but to fight against it, if that make any sense. It sure does when you're on the inside (Clive).

One way or another participants had to cope. The system did not go away. It intervened, at times harshly, occasionally supportively, but it never failed to be there in full authority and control, presenting itself in Clive's view as 'quite damaging to everyone who steps inside'. Participants' comments indicate that they used a combination of strategies, over a period of time, to cope with damaging situations. Overall, four interconnected strategies seemed to prevail. These involved: getting by; masking the pain; drug taking; and networking. With the exception of networking all of these involved some form of retreat from, or denial of, a situation that was deeply threatening to participants' social relations and sense of self and yet lay beyond their power to challenge or change.

'Getting by' was a matter of laying low, giving up and putting up and living with the despair. It meant avoiding confrontation whenever possible and retiring into oneself. In

some cases this could lead to an almost total retreat. 'Getting by' was a common coping mechanism for the women, and most frequently experienced by them as a response to a high level of anxiety and stress or during an episode of re-traumatisation. It was used mostly when out of sight of others specifically during times of withdrawal. Thus Karyn recounts how:

I lay in bed all covered up not wanting to face the world, and I don't go to places where the law is likely to be, or where things are going down. I keep out of pubs and stuff and I try to look different now and even wear a wig when I go out somedays.

And Lynn:

It was all got too much for me, especially when I was going through the court and trying to find other work. I couldn't face my family, I didn't want to eat, and some nights I would just sit in bed and cry myself to sleep....I still often think about my arrest and court appearance, and don't want to have anyone around me, or looking at me.

And for Lill:

When my head spins and I'm losing the plot I feel like dying. Yeah I know it sounds fucking mad coming from me, but I do, I fucking need time out to cope with all of this shit. I can't go on like this, really I can't. I just want a bit of peace and quite. Solitude! Fuck I had 'solitary' often inside but I didn't want it then.

As for the men, over half of them used this strategy in one form or another, especially when alone and predominantly following release. For Keith and Zach the family home became the 'safe' place where they felt secure from further distress:

It took me ages before I went out again, and then it was with my sister. No clubs or pubs, just to the shops as I couldn't handle the cops and that shit anymore (Zach).

Getting a loaf of bread was for me a major effort. I felt safe at home with no one looking at me all of the time and no pressure to do anything. I could veg out in front of the T.V. or settle into a book, anything to take my mind off the reality of a conviction and prison sentence (Keith).



‘Masking’ involved acting tough on the outside whilst tolerating the inner pain, hanging in and toughing it out, and using humour to cover the hurt. In contrast to the retreat associated with ‘getting by’, ‘masking’ was more a matter of toughing it out, surviving the pressure of the public gaze, and temporarily cope with the situation in hand. This was frequently used in public, but especially among friends and close family. The quotes from Keith and Clive are indicative:

I can feel the fear, the stress and the frustration coming up inside of me. If we are to go out as a family, I try to put on a brave face and ‘be happy’. Inside I’m still suffering, so I try to smile, shake hands then look for a quiet corner, small talk, and a quick exit (Keith).

I have friends who know all about me, so we joke about it all, but when I meet someone for the first time, and they start to ask me personal questions I have to turn to humour. They don’t know if I’m joking about my stay at ‘The Queens’ or if I’m for real, and my wife gets angry when I start to tell the funny stories about blokes inside. There are times though when it all becomes very serious and I can’t get through it without wanting to knock somebody’s head off. That’s when I just have to see the funny side to it. It hides the embarrassment but that’s all (Clive).

John and Guru frequently used a ‘mask’ to hide personal suffering when in prison, a tactic recalled by John as ‘self preservation.’

I came out of the SHU (solitary in Special Handling Unit) with one thing on my mind: don’t let the bastards see they had hurt me, ‘cause if they (officers) thought I couldn’t do it (take the added pressure) they would have me over a barrel, telling others I was a ‘dog.’

Guru’s mask not only protected his own self, but was used to hide the pain from his mother:

Like I said, it (prison) was hell and it hurt us all. I tried to say the right things and act as though I was okay but really I was fucked man. I could stand the bullshit from some of the shit in there, but used to play their games and told Mum everything was great.

As well as acting as a shield on public occasions, ‘masking’ also involved hiding from others who wanted to get too close. This could mean acting in a guarded or even hostile way. The ‘brave face’ could be turned into the ‘angry son or daughter look,’ as evidenced by Emma who recounts how:

I had close friends who wanted to help, also my father, but I really didn’t want anyone around me until I finished reporting. My life was much too complicated and the last thing I wanted was to have to explain why I was doing this or that....My father suffered the most as he always wanted to help and I was stand offish, aggro, and at times plain rude to him.

The difficulty of retaining the ‘mask’, and the feelings of frustration, anger, and, ultimately despair, that come from this were described by Lyn:

I am not the same me any more, and I just can’t find the way to let go of being annoyed by it all. Everyone asks me if I’m alright, but because I can’t tell them about it all I let it out as anger at them for asking. My fuse is so short today compared with what I used to be like, and that really gets to me. I suffer from stress and anxiety, and have to take medication at times. My whole life has changed and yes, I cope with it all as best as I can. I was never an angry person, and used to love being around friends. Now I don’t know. A part of me says try to get back to where I was before the court, but when I try it I begin to feel angry and hurt. The hurt is really deep and not always hidden I’m afraid. Perhaps I don’t cope.

As Lyn’s comments indicate, drug-use was commonly used alongside getting-by and masking as a means of coping. Overall, fourteen participants talked about their use of various drugs, including alcohol, prescription medication and illicit drugs. Six said that they used prescribed medication to assist them cope with stress and anxiety (although two had taken this prior to engaging with the system). In all, nine participants said that alcohol was as a major factor in coping with their lives, while five disclosed that they used illicit drugs as a way of coping. Many were worried about dependency. Lyn recounts how ‘I’ve been trying to get off it but I return to getting very uptight’. The problem was more forcibly put by Noni and Guru, both on illicit drugs:

I've used on and off for fucking years, as it helps me get through the day. When I got out this last time I couldn't fucking think about nothing except scoring first. How can they let me out from Bandyup, no fucking place to call home, no job except the street and dirty old men, it's fucked. And they ask me why I take the shit (Noni).

I don't really need it, but I feel better when I have some cause it keeps me going and feeling good. I fucking hate stressing out - and this takes the edge off. You don't wanna see me without the shit (Guru).

More proactively, twelve participants also talked about networking as a means of building up support from others who, for one reason or another, might be able to help. The possibilities ranged from fellow prisoners and offenders, to local community and church groups, and, most importantly, family.

Gaining support from fellow prisoners and offenders provided relief as participants could share their experiences with others who understood what they had been through. It could also, as we have seen, provide a forum for respect and assistance, a counter to the judgments of mainstream society: a place where Guru, for example could feel 'good about himself', and John felt 'trusted and well thought of'.

In addition, family, church and community groups provided comfort and support for some, particularly during times of stress. Thus for Keith:

I've returned to church, something that I found helped me in jail, and go with my partner every weekend and even at times during the week. It was like returning to home, no judgements, no questions, just good people (Keith).

Francis had always felt close to his church and its community:

I have always been in the church... my life wouldn't be the same without that in my life so I know no different. I stopped going for a couple of months though when I was in prison...but that was my problem I guess (Francis).

Lynn had lost touch with her old friends and parish church, but she has now settled in another area where she explains;

I go to church most weeks now, and find that I get through my weeks better with a few new friends to call and that helps me. I had spent so long quite lonely and on a bit of a downer, and find the friendships very supportive and understanding (Lynn).

Support from close family and friends was seen as crucial. Here I briefly recall the comments of Guru, Emma, Prince, Lynn, Clive, Keith and Francis. Guru spoke of his mother and brother's help, 'mum was always there....I would've been fucked without her and my brother doing what they did for me'. Prince remembered that his partner and sister 'were there waiting at the 'visits'....year in, year out, sun or rain', whilst Emma's father 'was understanding and helped me just by being there on the end of the phone.' For Lynn, having someone to talk to about the process 'was very important, especially when I was so ashamed by it all, I just needed to speak with someone I trusted and who would not put me down.' And for Clive and Keith, the support of their children was vital:

When my son first walked into the prison visits area I cried. He sat next to me with his arms around me, and while my wife and I talked about events, he just whispered that he loved me (Keith).

My daughters were a great strength to me at every turn. Each week they would come in with (partner) and talk about what was happening. They kept my hopes up (Clive).

And for Trendy, who was in many ways the most isolated, there was 'a close friend, she's good and helps me out (otherwise) fucking beam me up somewhere outta here man'.

Regardless of the strategy used, all participants found it difficult to cope at times. Even for the three who described the system in more optimistic terms, there were periods of acute stress and despair. Of all, Trendy epitomised the most desperate situation, and the

greatest feelings of futility and distress. This was coupled with an enormous anger against the system that had failed her:

I just wanna life that's all, away from that shit....I feel pulled every way somedays. It's fucked. I have to take so much shit and don't get no help to do it all. I need to live, man, and I fucking can't some days. I just wanna fucking say that those cunts need to look at what they did to me. Its fucking bad for me man what they fucking did.

## Chapter 8

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### Subjugation, power and resistance

Participants' experiences of their exposure to the criminal justice system are central to this chapter, and as the three preceding chapters have shown, the process provided ample opportunity for prolonged emotional, social and material damage to individuals and their families. This chapter reflects further on this, drawing together certain fundamental aspects of the participants' accounts with a number of the theoretical insights discussed in Chapter Three. Participants talked at length about the ways in which their sense of self was damaged, eroded or lost. They also talked about the social and economic losses they incurred and, because their connection with the criminal justice system was close and prolonged, they spoke of it in terms of a personal relationship. This relationship was seen to be adversarial and, for the greater part, profoundly unjust, with power stacked in favour of the criminal justice system. Against, and as a result of this asymmetrical relationship, resistance was evidenced on a number of occasions.

The following discussion has important policy implications, for in revealing how personal damage readily occurs to those who are already vulnerable, it suggests that rehabilitation may be little more than an illusory phenomenon unless a number of criminal justice processes are radically changed. It also underlines the point that community living skills are unlikely to be learned within the kind of total institution represented by the great majority of contemporary prisons. My underlying argument is that the systemic factors leading to brutalisation and damage need to be attended to first

and foremost. Failure to do so will undermine any effort aimed at rehabilitation and community living from the outset. This is discussed in the final chapter.

The impact of prison has been voiced throughout the preceding chapters with participants describing conditions which left a deep scar on their identity and made it difficult for them to take up community living. I begin by discussing an insight into the impact of prison, the site of severe punitive measures, surveillance and control, and throughout the chapter I deal with how humiliating processes, such as strip searches and urine tests, impact on a person's self esteem. Under prison regimes people are subject to the Prisons Act, Director General's Rules, Superintendent's Orders, Senior Office's instructions for unit management regimes, as well as the regulations attached to individual prisons. Prisoners lose citizenship rights, have limited access to voting and may have personal property confiscated under the Crime and Confiscation of Goods Act.

Words such as 'ex-prisoner' 'offender' and 'convicted' resonate through the offender's family and networks and continue beyond the sentence handed down by the court. Wilkinson (2003:4) suggests, that stigma 'transfers to the entire family' with the result that 'neighbours and associates tend to be wary and suspicious of the offender and even their family members, making community acceptance very difficult'. In attempting to counteract effects such as this, the Ohio Department of Rehabilitation and Correction suggests that 'communities are strengthened and the quality of life is improved' when the responses to crime 'are tailored to the preferences and needs of victims, communities and offenders' families' (cited in Correctional Services of Canada 2004:2), a topic referred to in the final chapter.

A Correctional Services of Canada study argued that 'short prison sentences have a more favourable impact on inmate attitudes than longer sentences' (2004:1-2). The report also found that long prison sentences for non-violent offenders 'may...not serve their intended purpose...and may contribute to higher recidivism levels because of their impact on inmate attitudes' (ibid), adding that 'the longer inmates are confined, the stronger their identification with inmate norms and values and the greater their difficulty in adjusting to life once released' (ibid). Similarly Walters (2003:339) suggests that there are changes to the way people think when they enter prison and thinking like a criminal and identifying as a criminal increases following entry to prison, particularly first timers.

Irwin and Owen described the 'taken for granted - deeply embedded interpretations and responses that prisoners acquire through living in the unique, routinised prison world in spite of any conscious effort to avoid acquiring them' (cited in Leibling and Maruna 2005:113). As part of this, prisoners exhibit 'unconscious habits and automatic responses' (ibid). Another important aspect of prison life is described by Lieblich and Maruna (2004) whereby a prisoner purposefully avoids being noticed given his or her experiences of 'fear, anxiety, loneliness, trauma, depression, injustice, powerlessness, violence and uncertainty' (2004:3). At the same time, the Correctional Services of Canada maintains that a prison environment encourages inmates 'to band together to reduce their individual pain' (2004:3).



### *Damage to sense of self*

Profound damage to a person's sense of self can occur, when those with the power to judge, attribute to that person a blemished character or spoilt identity (Goffman 1968). In total institutions such as prisons, the shift from ordinary to diminished status is marked by the initiation ceremonies described by Goffman. These establish the powerful nature of the authorities, making a very clear distinction between inmates and staff, severing the connection with civil life. The process is brought about through personal defacements; 'dispossession' the stripping away any individualising features, and a 'leaving off' which demands a 'dispossession of property, important because persons invest self feelings in their possessions' (Goffman 1968:27).

Participants in this study experienced a number of 'leaving off' points, beginning at the police station or lock-up. Here they experienced the first and crucial markers of a changed sense of self, accompanied by the loss of familiar props central to their way of being. For example, Lynn had to remove all of her jewellery for several hours and had the contents of her handbag displayed in front of her as items were picked over and discussed. And Trendy, who had her entire possessions in her 'kit', a bag that she took from squat to squat, suffered its contents being made the target of humiliating gestures, with one officer holding a pair of her knickers in front of him and a female officer asking her why she wore knickers at all. Experiences such as these produced feelings of extreme humiliation especially when people felt that the core of their being was under threat.

This erosion of self through exposure and humiliation was most acutely experienced by those who went to prison. In particular, humiliating events such as cell searches were mortifying examples of the power the system had to implant a sense of emptiness into individuals, stripping them of possessions and normal rights of personal dignity and integrity. The possession of personal effects in the cell is a 'privilege' that can be removed by prison authorities, and the threat of that removal is often used as a management tool.

A sense of worthlessness was increasingly internalised when people became isolated from their personal and social supports and more and more subject to the judgement of officials. Trendy reported feeling totally isolated and dejected, believing herself to be 'bad', when she was removed from her few friends at the squat, underwent another police interview and was then detained in custody. Similarly, Francis felt as though he had let his family down and that his life was no longer worth living – he was no longer a business proprietor, but a criminal. He was subjected to several hours of interrogation, followed by a period of overnight custody at the lock-up and only allowed to speak to his family once during this time. As van Wormer (2001:303) states, 'in the criminal justice system, clients often find their very selfhood defined by their crime'.

Intentionally or unintentionally, police and prison authorities all too often reproduced and amplified the damage participants had previously experienced. Goffman (1968:85) refers to the will-breaking and welcoming practices that encourage a prisoner to submit and become manageable. Amongst the women especially, such experiences could well mimic

the brutalising treatment received from partners or as victims of past assault (Salamone 2002:2, Goulding 2004:33). Thus, the way that Emma was treated by police officers at her public arrest, reminded her of the way she had been treated by her mother; when she was pushed, hit, called a liar, and later abandoned. Emma spoke of the incident with the police as horrific, saying that she was treated like a child, spoken down to, and then isolated from any support when she was put in the police van on her own. She recalls being completely ignored when she shouted and screamed during the period of her detention at the lock-up and being shunned as though she was mad. In all these ways, Emma re-experienced her early childhood trauma, exacerbating the mental condition for which she required daily medication.

Trendy experienced the same kind of situation, where officers' treatment recalled and reinforced earlier abuse. In her case, the trauma arose from being searched and then stripped. Trendy was not only a victim of previous family abuse, but had also been violated by her drug dealer and, at times, by other people who were homeless and lived in the squats.

Being ordered to remove her personal belongings for examination by the police and prison authorities reminded her of having no place to keep intimate items safe and secure. It also stripped her of what few possessions she had left in life. As a result she became angry and violent, leading to further punishing behaviours from authorities. She recalls feeling sick and being called a 'dirty little slut' by the people who she had originally thought would support her. When she was led away to the cell block, she was not seen by

a medical officer at the clinic until late in the afternoon, by which time she had already scored. This incident was just one of the many that she remembered and recounted, incidents which continually amplified previous damage, reinforcing her self image as 'bad'.

According to van Wormer, whose work among women prisoners centres around counselling them through a strengths approach, 'the shame a woman feels being punished as a prisoner, moreover, may heighten the sense of shame and secrecy the woman has already experienced as a sexual abuse victim' (2001:285). Further to this, she explains that,

the prevalence of childhood and later sexual abuse histories among incarcerated women leaves them at high risk for being retraumatised by the invasive body searches and violation of bathroom or other personal privacy that occur routinely in the prison setting (van Wormer 2001:285).

As seen in previous chapters, this was exemplified through many participants' stories when procedures triggered anger and hostility. With regard to this, van Wormer claims, 'when prison employees violate these boundaries the survivor's experiences of earlier abuse are recapitulated in such a way that the woman reacts to the experience with an emotional intensity that may seem out of proportion to the violation' (2001:285). The humiliating and violating procedure of the 'strip search' warrants further discussion.

### *Strip searches*

The practice of random and regular strip searching of people held in custody is seen by various jurisdictions as an effective tool in the fight against drug use in prisons, and as a

way to reduce the level of contraband entering the areas. However, the effectiveness of such measures is disputed by Salamone (2003:25) who suggests that 'studies across jurisdictions indicate that detection of contraband during strip searches is highly unlikely'. Similarly, Haining suggests that 'strip-searching and urine testing have not prevented drugs being available in prison' (1996:67). Nevertheless, strip searches occur with regularity and prisoners are daily exposed to the gaze of officers and peers as they stand naked.

Sections 41 and 49 of the Western Australian Prisons Act (2003) and Sections 78 to 81 of the Prisons Regulations 1982, allow for any person entering or leaving a prison to be searched. Prisoners entering and leaving a 'visits area' are routinely subjected to a strip search and are required to change into special clothing. This involves taking off all standard prison clothing, including underwear, and putting clean 'visits uniforms' on for the duration of the visit. It may also include a more thorough search of the person. Once the visit is over, the prison clothing is put on again, and again under observation. This increases the level of trauma prisoners already experienced and re-victimise those prisoners who have experienced sexual abuse.

All prisoners leaving the main prison compound for work will undergo strip searches each time they leave and return. For prisoners on gardening duties or for those working alongside staff at a family visit centre, this can mean several searches each day, although some of these will only mean having to change clothing in front of an officer, rather than a full body search

Whilst rules such as Western Australia's Prisons Regulations 88(4) require that, subject to certain caveats, 'prisoners shall not be stripped of his clothing and searched in the sight or the presence of a person of the opposite sex, Salamone (2003:6) records that 'in practice ....there may be some occasions where a member of the opposite sex conducts or is present during strip searches and during provision of urine samples'. More generally, Walsh (2004:21) showed that 'strip searches are used excessively; they are experienced by both men and women as degrading and humiliating, and for women who are survivors of sexual assault....may result in significant trauma'. Walsh found that although the prison department she researched had established procedures which were 'providing some safeguards for prisoners experiencing strip searches', its ex-prisoners stated that these procedures are not always followed' (2005:14). Kilroy (2004:14) describes strip searching as an 'abusive practice which is effectively a criminal assault' being amongst 'the most demeaning and humiliating aspects of imprisonment'. She also points out that strip searches, in the case of women who have been sexually abused, revictimises them (Kilroy 2004:14). Men also undergo personal humiliation during strip searches especially male prisoners who have experienced rape. Having to strip off in front of others may lead prisoners, both male and female to cancel visits and/or place them in situations in which events are recalled in horrific detail, thus placing them at risk of serious self harm (Human Rights Watch, 2005:3)

Trauma also may occur during the random drug testing, where a prisoner is expected to urinate in a jar 'on-demand' and in front of an officer. The pressure to urinate whilst being observed by an officer or peer is a humiliating experience for many prisoners, and

the consequences for prisoners unable to provide a sample remain the same as those affected by drugs.

*Changed identity: discredited, degraded, labelled and brutalised.*

Lynn was told that she should sit down and remain silent in the court while a male police officer and male magistrate spoke about her and her alleged offences. She had been accused by a male manager, and arrested by a male police officer. As she rose to complain that there were several points in error, she was told that she could not speak and that she would be 'removed from the court to custody' if she continued to do so. A male court orderly standing nearby moved closer to her. She broke down crying, and following her sentence, was assisted from the courtroom by a male court security officer who took her to a local doctor's surgery. Such was the impact of the process upon her, with its constant reminders of past abuse and oppression by males, that she went into a period of not speaking to her husband and being unable to walk down the street to the shops due to fear of meeting other people. She began to take medication to enable her to sleep, and thereafter suffered frequent anxiety attacks. She said that she felt bad about herself. She could not bring herself to see other members of her close knit family for several weeks, and continues to take medication for what her doctor described as heightened anxiety, sleeplessness and depression. (taken from researchers notes of interview 2002)

Lynn's encounter with the system highlights, in a profound way, the manner in which public humiliation, with its reminders of previous abuse, provides the spring from which a series of consequences flow, including fractures in personal relationships, material and personal loss, and damage to mental health, all of which are discussed later in this section and the chapter as a whole. It is against the scenes enacted in police stations, courts, and prisons that I turn to reflect on the self and its identity in crisis.

Participants consistently talked about their feelings of being judged and shamed. The sense of inner worthlessness which this engendered can be related to Cooley's (1964) arguments about the looking glass self and supports Blumer's (1969:12) notion that we view our self 'from the process of social interaction in which other people are defining a person to himself [sic]'. The *self*, as subject throughout the criminal justice system, was not just responding to objective others within the system, but interpreting and reflecting

in such a way as to place its own mark, however small, upon it. The self was central to, and the focus of, each and every procedure, carrying an emotional presence into the social structure of the criminal justice system. Thus for Barbalet emotions have, ‘...a macro-sociological presence in their own right, or, more specifically, emotion inheres simultaneously in individuals and in the social structures and relationships in which individuals are embedded’(2001:65).

Shame, as Barbalet points out, is ‘unavoidably a social emotion’, mediated through the relationship between the ‘subjective self and the objective other’ (2001:103-4). In this respect it operates to ‘pull those who experience it in line with social expectations’ (ibid). In the case of conviction, it also acts as a constant reproach, against which the participants in this study constantly struggled. Hence, in Chapter Five, Keith recounted his sense of shame when he overheard comments at his workplace that he was now to be treated as a person with a criminal record, a person who ‘could not be totally trusted’ and who would need to be watched. Similarly, Clive was dismayed when he heard peers suggest that at any future point he might revert back to criminal activities. This kind of ‘marking’ could extend to family and friends, with Ronald recounting:

See, they said I was this and that - the fucking wankers, they called me everything....I hate the cunts for that see. That’s no way to treat a person. Old friends, some business people, even some family wouldn’t speak to me.

Incidents such as these meant that participants spent a great deal of energy in trying to counteract the inner sense of being labelled and discredited. Furthermore, this sense of inferiority, of the ‘spoiled self’ could take on a global character, undermining their sense



of personal capacity in a total sense. Lynn struggled to cope with day to day activities and explained ‘I felt absolutely awful by this stage - no words can describe it to you. I wanted my world to end there and then’. Similarly, Keith recounted that ‘I thought that I wasn’t worthy of anything and that the best thing to do was not be around any more’. In saying this, Keith brings to mind Goffman’s observation that stigmatised identity can be used as ‘an ideology to explain...inferiority and account for the danger [the person] represent[s]’ (1963:14).

The moment when a participant became central to a police inquiry and was publicly identified as ‘the accused’ acted as a profound marker between ‘then’ and ‘now’ for almost all those I talked to. For Sandra it was a moment at which she had to ask, ‘how do you begin to say that you’ve fucked up so badly’? And from thereon participants suffered shocks to the self, a sense of horror and dismay, which are hard, if not impossible to eradicate from memory. Keith remembered how ‘I became desperate throughout that time of change, and much of that remains with me today, as I still think of it all’. For Francis, the period will never be forgotten as he recalls here:

It’s the wasted time in my life that really still gets to me, the black hole that absorbed everything that we did....I still believe that the time was the most harmful to us.

These experiences were particularly acute for those who had never previously had contact with the police. Lynn recalls experiencing so much humiliation that she ‘wanted to die’ when the store security officer called her a thief and liar, and bullied her to sit down in front of him and her manager to await the arrival of the police, and when she was then escorted by police from her desk in full view of her customers and co-workers. Lill’s

experience was similar. In her case, the police searched her and her belongings on the footpath close to customers and the staff of a night club.

In all, sixteen participants, including Jude, talked about the way in which the arrest itself marked them down as 'guilty', long before the trial and formal conviction. These feelings were, on occasions, thoroughly reinforced by certain police behaviour in which accusations and insults outside the normal code of conduct were levelled at the accused person. Karyn, for example, recalls the police who searched her home calling her a piece of shit, a terrible mother and a fucking whore. This resulted in her feeling suicidal. Besides verbal abuse, examples of this kind of behaviour include destroying the lining of a handbag during a search of the person, pushing a young man against a wall with such force as to cause injury to his shoulder and kneeling on the neck of the accused whilst he was held on the ground. A young woman was hit with a book across the side of her face and a person with a long criminal history was punched and kicked by police as they entered his home and threw him to the floor. In addition, participants recalled the police using very tight grips, pressing the face close to the accused person's face, using intimidating language and presenting an aggressive and frightening posture.

The impact of prison on the subjectivities of those who entered was twofold. In the first instance entry to prison often offered relief from being under the public gaze, subject to police surveillance and the strain of going through the court. It allowed Clive to 'get into the swing of things' and Karyn to be 'settled inside' for a brief period, while for Guru and John, prison provided a distinct gain in status since fellow inmates looked up to them as

being tough enough to stand up against the system. But secondly, and at the end of the day all this counted for little and came at a damaging price; a sense of 'self-as-crim'. And regardless of their immediate feelings of safety or the relief that the sentencing process was behind them, the brutality of the prison experience left an indelible mark.

In this respect, participants talked not only about the name-calling and abusive remarks made about them by officers but also the feelings they had of themselves whilst being alone for most of the time in a small cell. The solitude of the cell, while it afforded a measure of safety, also represented a space to experience the nature of prison on the self, to feel the loss, the removal of people and material from one's immediate surroundings, and to reflect upon the daily put-downs and reminders of one's position in the institution. For participants who had been exposed to violence and abuse on the outside this isolation added to feelings of hopelessness and dejection, a time during which Karyn wanted to 'end it all'. Even when physical abuse was not encountered, the constant reminder that one was a crim, a no hoper, a loser, was enough to unsettle participants who, like Keith, spoke of times when he 'suffered in silence'.

The image of being a criminal was reinforced at every turn. Participants spoke of queuing up for medication that was being handed out through a metal grille, being watched by a uniformed officer sitting among high tech surveillance equipment, waiting in line for a phone call, asking for toilet paper, a toothbrush, a tampon. There was never any doubt for them, even for a moment, that this was prison and that they were prisoners. As reported in Chapter Seven, upon release, participants were generally unsuccessful in their attempts

to change the image created for them whilst they were in prison. In sum, for those participants who experienced prison, incarceration ensured that the entrenched sense of the self as criminal became a scar that seldom healed.

Participants spoke of enduring reminders of their ‘blemished’ status. Karyn, for example, spoke for many when she said ‘if I’m inside, or out, I get treated with the same shit, so I never get seen as me, just a crim’. On many occasions following release, these participants had to declare their *self* in the form of a police clearance, good work record or character reference, whether for an application for work, rental housing, insurance or travel visas. These served as stark reminders of their previous experiences, as emotional triggers which undermined their hard gained status of normal community members as well as their attempts to overcome what Goffman calls ‘the objective basis’ of their failing (1963:19).

The accumulation of damaging experiences left participants with a profound sense that their changed identity was more or less permanent, signifying a decisive rupture with an ‘old’ or ‘innocent’ self, which had ceased to be ‘credit worthy’ as far as the wider audience was concerned. Memories of the old self, and longings for it, were expressed by many and in many ways. Lill produced photographs of herself as a child and spoke of an auntie who always cared. She longed to be seen as someone who could be loved, be honest, be kind and not always seen as a ‘fucking slut...a crim...and drug-fucked’. Guru, who continually referred to himself as ‘me, when I was’ or ‘me before that happened’,

craved to regain some of his previous identity, saying ‘some of my old clients are slowly returning, and they can see that I’m back in business’.

This distinction between the old and new self went beyond the longing for the ‘good old days’, especially for participants who experienced periods of solitude in which they had the opportunity to recollect memories of a previous self, one less discredited. As noted in Chapter Five, Lill, Noni and Trendy, all wore scars of previous abuse. And yet they were still able to recall an identity which was significantly different, one that represented a safe and secure self prior to their connection with the criminal justice system. Similarly, Clive and Keith recollected business ventures, family and associates from a period prior to their conviction. With regard to such recall, Siegel claims that if memories ‘involve the sense of self at some time in the past’, then they are ‘a part of explicit autobiographical memory’(1999:42). He also suggests that such recollections usually involve ‘their implicit counterparts’ where in such cases, not only does the explicit story come out of the past, but also carries the ‘implicit recollections we cast on the stories we tell’ (ibid).

In this way, the quite distinct ‘past’ self can be recollected in a stronger sense than a story alone, as it contains elements of emotion and can provide evidence of the ‘standards’ one once held, along with a sense of personal security. Against Olson and Hafer’s, observation that individuals may recall the past in inaccurate ways so as to ‘enhance one’s apparent power, goodness and stability’ (1990:296), participants did not make claims about their current status, which was acknowledged to be, at times irrevocably, ‘spoiled’. Rather they recalled an older self with longing, and as a reminder that things

had once been different. As well as this, the re-presentation of this old self – through showing photos, for example, presented an opportunity for participants to show that they were capable of better standards. The old self was for them some kind of proof of this. Recalling a previously held and less discredited identity may well connect in part to what Goffman refers to as ‘impression management’ where ‘individuals will be concerned with maintaining the impression that they are living up to the many standards by which they and their products are judged’ (1971:243). The acts of recalling this other self, and presenting it to an audience, as typified by Trendy’s claim ‘I wasn’t always like this’, or Keith showing his curriculum vitae, has thus to be seen in the context of characters so damaged, who at the same time showed that despite it all, they once had respect, were loved, and were capable of better things. In a sense this old self was protected, almost isolated from the present abuse and could not be changed.

*Loss of material possessions, relationships and self*

Goffman reminds us that in places like prison and the police lock-up, ‘the inmate is stripped of all of his [sic] possessions’ (1968:28). Further, alongside the removal of personal items, there is the likely loss of one’s ‘usual appearance...thus suffering a personal defacement’ (1968:29). For the vast majority of participants, this stripping of personal effects occurred at the moment of arrest and later upon conviction. However, prison was the definitive place of dispossession. As the following discussion indicates, this dispossession took many forms including work opportunities, civil rights, privacy, close relationships, and participation in celebrations and rituals.

The loss of occupational status occurred for all those participants who had previously held jobs. More broadly, and even when the sentence had formally run its time, their encounter with the criminal justice system had a negative impact upon their work opportunities, being trusted by other people, their treatment by banks and insurance companies and their rejection by officials at the Job Centre. In short it affected the ways in which they felt they were seen by others in manifold areas of their lives. Goffman recognises that certain losses:

...are irrevocable and may be painfully experienced as such. It may not be possible to make up, at a later phase of the life cycle, the time not now spent in education or job advancement, in courting, or rearing one's children (1968:25)

The loss of civil rights is an integral part of the process whereby 'a person's self is mortified' (Goffman 1968:24). This particular loss disenfranchises a person from civilian life, and, when taken to an extreme, culminates in a form of 'civil death' (ibid), where according to Garland and Young (198:22) the law specifies that 'prisoners shall not have the rights and capacities available to other citizens'. Browne (2002:322) described the 'forfeit attached to conviction' whereby the loss of citizenship rights is a part of the punishment, radically undermining the democratic positioning of the prisoner as a legal subject.

The accounts of the participants in this study suggest that they experienced a steady erosion of rights was experienced, from the police station to the reception counter of prison and beyond. Particularly in prison, things such as visits from friends and relatives, making medical appointments and retrieving items held in property were rendered

provisional and subject to negotiation and uncertainty. Even more difficult were the 'freedom of movement' rights embodied in such things as obtaining a transfer to another prison, or having an inter-prison visit to another family member held in custody.

With specific reference to visiting rights, Ridley-Smith and Redman (cited in Brown and Wilkie 2002:291) report that during the Australian federal election campaign of 1999, the opportunity to vote was not only limited on the grounds of legal entitlement, but 'in broad terms, prisoners were not given the opportunity to participate'. While none of the participants in this study raised the matter of voting rights, it remains a matter of serious concern to bodies such as the Prison Reform Group of Western Australia (PRGWA) as a signifier of potential civil death. Prior to the 1999 Commonwealth Election, for example, complaints were made to the Australian Electoral Commission and to prison management about the lack of political information and voting facilities available to prisoners (discussion with members of PRGWA and Justice Action 1999).

The most acute loss related to personal relationships. These often ended abruptly at arrest or in court. Francis stood and waved goodbye to his family from the dock in the Supreme Court. Karyn's young child was in the arms of a police officer when she kissed her goodbye as she was escorted from her home. Zach was physically removed from the family home in front of his mother and sister and Ronald was taken from his workplace to the police station where he was unable to contact his wife for over ten hours. For those who went to prison the loss of intimacy was particularly acute. Guru spent his first night in custody crying over the loss of his family and girlfriend while Karyn suffered



separation from her young daughter, loss of her home and her household and personal possessions. Even reminders of loved ones such as letters and photographs were only tenuously held in a prison cell and could be removed or destroyed during a cell search.

Imprisonment also brought severance of participation in normal celebratory events, for although families were invited to attend at Christmas and Easter, other celebrations were ignored in the prison environment. Family birthdays, anniversaries, and significant days such as a patron saint day, a solstice or new year's day and international days had to be remembered in isolation away from significant others. In addition to this, when a loved one died, prisoners were unable to participate in the grieving ceremonies amongst family. When Prince was unable to attend the funeral rites for his relative due to his security rating and distance from his community, he lost both the opportunity to grieve among his family and his position as a family elder.

The loss of possessions and loved ones, brought about a deep emotional response, sometimes withdrawal, other times anger and aggression aimed at anyone from other family members to officers. Such experiences underline Garland's point that 'prison is a machine that silences as well as segregates. It deprives inmates of their voices along with their liberty....The lawbreaker is incapacitated as well as excommunicated' (cited in Brown and Meredith 2002:v)

## **Family members**

Much of what I have written about participants is reflected in their families' experiences, though they may not have suffered the losses or sense of mortification to the same extent. But they too experienced Goffman's 'barrier' between themselves 'and the wider world', marking 'the first curtailment of self', as well as a certain amount of 'role dispossession' (Goffman 1968:24). They recalled their sense of diminished position - their spoiled identities - when they were subjected to a series of 'checking' or investigation procedures, including checks against police records, warrant lists, and outstanding fines. The sense of mortification was particularly deep for those visiting their relatives in prison, where they became subject to various 'admission procedures and obedience tests' (Goffman 1968:27) at the gatehouse. While they did not experience the actual physical 'leaving off and a taking on' that Goffman (ibid) describes, they were still subject to things such as identification checks, moving through the technical apparatus to be checked for contraband and metal objects, and on occasions, being subject to the close physical proximity of drug detection dogs. One of the deepest forms of mortification for family members is a strip search, the moment when 'one's on-person possessions are pawed and fingered by an official' (Goffman 1968:36). [This was endured by one male and two female family members in this study. During the writing up stage of this study, the process of strip searching visitors has stopped]

Like their accused relatives, family members lost a sense of their old selves and 'the good old times'. For Paula, confronted with four years of separation and a sense of damage that was difficult for her to express, the sentencing day was described as downright terrible. It

left her with a horrendous feeling that things had radically shifted and would never be the same again:

I wasn't a widow, he wasn't on holidays, he went to jail for fucks sake, and I was left sitting there never to be the frigging same again, and I can't even say what I was - except very fucking different.

In sum, for both participants and family members the consequences of involvement with the criminal justice system were profound. They involved an enduring sense of material and personal loss which could not be refuted or eradicated. And for these experiences to be fully understood, they need to be set in context: that is, against the power relations between accusers and the accused; the officials and convicted; mainstream society and those it declares deviant. Just as important, this study needs to acknowledge the resistances to which these power relations gave rise. It is to these questions of power and resistance that we now turn.

### **Power and resistance**

The nature of the calculated and asymmetrical deployment of power during the processes of arrest and imprisonment is probed by Goffman when he suggests that:

An important part of the theory of human nature in many total institutions is the belief that if the new inmate can be made to show extreme deference to staff immediately upon arrival, he will thereafter be manageable – that in submitting to these initial demands, his 'resistance' or 'spirit' is somehow broken (1968:85).

Goffman further adds that the institutional goal:

...lets loose a doctrine, with its own inquisitors....and there seems to be no natural check on the licence of easy interpretation that results....The phantom of

‘security’ in prisons and the staff actions justified in its name are instances of these dangers (1968:81).

These observations are echoed in Foucault’s, observation that the carceral system ‘succeeds in making the power to punish natural and legitimate’ and thereby communicates ‘a type of power that the law validates and that justice uses as its favourite weapon’, (1991:301-2). In asking how people come to accept, and even tolerate, being punished, Foucault finds the answer in the theory of the contract, by which the ‘fiction of a juridical subject [gives] to others the power to exercise over him the right that he himself possesses over them’ (1991:303). He adds that it is ‘highly probable that the great carceral continuum...constituted the technical and real, immediately material counterpart of that chimerical granting of the right to punish’ (ibid). This fictional juridical subject is exemplified *par excellence* in court. Here a respectful image of power being balanced is presented, with the symbol of the scales emphasising this judicial point. At the same time the court can enforce attendance, require a person to take an oath or affirmation, allocate space in the courtroom, set a standard of dress and language; and regulate who is able to attend and in what role. In effect, the power of the court operates by suppressing the voice of the accused (and the victim) and only allowing certain information to be verbalised, at a specific moment, by a selected individual.

Against the orderliness of the court, power relations at arrest, interview and interrogation can be played out in quite brutal ways. Subjects may find themselves with their ‘backs up against the wall’, with their physical and personal safety directly threatened. As we have seen, participants claimed they were subject to comments such as ‘You did it didn’t you,

you fucking arsehole?’ or ‘your kind make me sick...nothing but scum’. Even Jude, who generally felt the system was fair, recalled the brutality of the arrest and how he had to fight to retain his sense of self:

They were fairly abrasive, shouting at me, pushing me around...making me feel like a low-life kind of person. I just stuck to my guns and made it as difficult as possible for them...but didn’t like the way they were treating me, pushing me around, and making me feel uncomfortable. I became defiant. Only the police said that I was guilty, no one else.

In line with this, Findlay et al suggest that policing during interrogation may involve ‘elements of unconscionable pressure or even abuse of people suspected of criminal offences’ (1994:38). They also suggest that:

Interrogation of suspects in police custody involves substantial interference with their liberty. Also, it may, in some circumstances, involve physical or psychological abuse and produce unreliable evidence (1994:39).

At the same time, it needs to be acknowledged that police and prison staff are at times placed in dangerous and life-threatening situation, and are themselves subject to physical and verbal abuse. Furthermore, the police and prison cultures ‘captures’ individual officers as much as the processes described here impacts upon the prisoner.

Despite the formalised powers of the court and the more obvious brutal experiences of arrest and imprisonment, participants in this study resisted on a number of occasions. These markers of resistance, to which I now turn, provide ‘glimmers of hope’ in the sense that those concerned, while extensively controlled and damaged, still had the courage and spirit to resist; their sense of self wasn’t entirely lost. On the contrary, it was something worth fighting for.

Foucault suggests that ‘power depends upon a multiplicity of points of resistance’ (1981a:95). These ‘multiplicity of points’ and the individual actions to which they gave rise, were evidenced time and again in this study. In the formalised atmosphere of the court, Guru broke ranks with his first lawyer and selected one who responded to his wishes, while Jude refused Legal Aid because they advised him to plead ‘guilty’, and instead advocated for himself in court. During arrest, a number of participants decided to “up the anti” and fight back, precisely because their backs were against the wall. Trendy said she would ‘fight the cunts everywhere I fucking could’ and Karyn told police officers they could not enter her home without a search warrant thereby suffering extra punishment with the two officers pushing past her, verbally abusing her in front of her young child and emptying the contents of her fridge over the floor. And within prison, despite its totalising powers and surveillance capacities, resistance could emerge in many forms to suit the particular situation. It could be subtle or loud, passive or aggressive, and personal or collective. And it could range from activities such as climbing on the roof of a prison unit, having a ‘sit-in’, refusing to work in prison industries, waving a fist in the air to fellow prisoners whilst walking calmly under escort to the Special Handling Unit, to placing a complaint form in the ombudsman’s mail box in view of the prison staff.

In Chapter Five the point was made that prison provides numerous rifts, gaps, and spaces that allow prisoners to undermine the power relations to which they are subject. Clive and Francis’ statements typify the situation of the direct or even violent forms of retaliation:

You start to see that the system is against you so you have no choice but to fight against it, if that make any sense. It sure does when you’re on the inside (Clive).

Prison encouraged me to respond to situations more violently, more aggressively, and with far more anger than I ever thought was within me. I felt isolated and removed from people, especially prison staff (Francis).

While less confrontational, the comments of many of the women in this study echoed this. Karyn for whom entry to prison was a frequent occurrence, resisted the ‘put-downs and fucking way they disrespected me and the others’. For her, the prison system was as violent as her insecure and unsafe house where treatment at the hands of her partner and dealers left her prepared to ‘fight the pricks whoever they are’. Actions such as these invited pay-back with Lill recalling how her resistance to the demeaning language and treatment that ‘always got my back up’, resulting in her spending long periods in isolation. It was antagonisms such as these that led to the Casuarina prison riot of Christmas 1998, in a prison which embodied the ‘conditions for disturbance, drug intoxication, confrontation and collective violence’ (Smith 1999: 102/103). In this case several months of prisoner lockdowns followed the riots.<sup>31</sup> This led to protests outside the prison gates and a 24 hour vigil on the steps of Parliament House, Perth, organised by the Prisoners’ Advisory Support Service (PASS), the Prison Chaplains and the Churches Social Justice Commissions (notes from minutes of meetings held by PASS, 1999).

Resistance within prison can also take the form of exposing abuse through the use of connections outside. Thus Keith recalled his numerous attempts to use his ‘powerful

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<sup>31</sup> Prisoners were held in cell for up to 23 hrs each day, for over six months with no recreation, industries or education activities to attend (my notes from Prisoner’s Advisory Support Service (PASS), during 1999). Slowly, after nine months, and beginning with the most vulnerable and protected prisoners, the prison returned to a normal day routine. The prison environment changed forever as fences enclosed each unit and the campus style became over-night, a series of prisons within a prison.

friends' (respected community members) to get information about prison abuse out into the community. He described how he observed and recorded activities in the prison for these connections to 'get back at the bastards' and to counteract the power of the prison over him and other prisoners. Similarly, Prince wrote daily to ex-colleagues from his social-work and community development days in an attempt to get the information out to places where counteraction might be possible.

Looking back, I recall a number of my own resistances as a prisoner. Some of these were collective in the sense that I engaged in them as part of a wider group of prisoners, others more individual and personal. On the collective dimension, I recall a night after lock-up when I joined with peers in banging the cell door and pressing the alarm bell in response to a failure of officers to assist a prisoner who was sick, distressed and screaming for help. As a lead up to an individual act, I recall a 'ramp' of our unit when an old prisoner, a long term, was pushed down the stairs by officers trying to force him to return quickly to his cell. He was unable to get to his feet so, standing outside my cell wearing only a pair of jocks as my cell was being searched I broke the 'obedience' line in order to help him. I was immediately hit with a baton and pulled away. I lost my privilege of the next visit and missed phone calls for a week as punishment. Two other prisoners came to my rescue and suffered far worse consequences for their trouble. This incident, and the response to it, brings to mind an episode recounted by Keith who experienced a similar form of punishment when he attempted to support the rights of another prisoner:

I couldn't stand by while they continually told a young lad to fuck off and come back when he grew up. After questioning the officer why he was refusing to hear the lad's complaint, the officer in charge that afternoon made my life hell, and within an hour my cell was ramped.



At a more personal, 'self' level, I undertook a number of resistant practices in order to maintain and secure my sense of self. In essence, they involved an attempt to silently present my 'self', the self that I needed to retain, to present to anyone entering my cell.

My cell was quite bare save for several books, a photograph of a Buddhist statue and photos of my three daughters, my MGB and my house. A photo of my aged and disabled mother was placed in a special book. There was, much later, a clock radio and a TV. Note paper and pens were always near my bed and the cell was neat, clean and tidy. I 'colonised' the space with remnants of *my civil life* including my daily practice of meditation. I didn't want to lose my 'self' to the system, and resisted wherever possible; maintaining a strict vegan diet, purchasing soy milk, honey and dried fruit. I invited the Catholic chaplain and Buddhist monks into my area and encouraged other prisoners to join in meditation groups; thus enabling some form of continuity with my recent work among both communities.

These simple acts of self preservation did not amount to an act of insubordination, but were quite deliberate attempts to deny access by the system to my self. Goffman (1968:278) highlights such stances that combine 'stiffness, dignity, and coolness in a particular mixture that conveys insufficient insolence to call forth immediate punishment and yet expresses that one is entirely one's own [person]' (Goffman 1968:278).

Much later, as an ex-prisoner I developed an idea for the Prisoner's Advisory Support Service (PASS) and together with colleagues often enraged prison authorities by using our political networks and by our media releases and public commentary. These actions produced some gains. For example, PASS contributed to changes to the Prison Act, search procedures, family visits, grievance procedures and telephone calls while lobbying for greater openness and accountability. Moves such as these, in both the government and non-government sectors culminated in the introduction of the independent Prison's Inspectorate.

The relationship between the resistances involved in preserving a sense of self – a self that exists over and beyond the damaging effects of the penal system – and the capacity to engage in coordinated challenges to the system, is beyond the scope of this thesis. Suffice to say that such a connection does exist to the extent that a secure sense of ‘self’ assists individuals in the collective fight against injustice. However, there lies the double importance, individual and collective, for challenging all practices which degrade, humiliate and dehumanise.

## **Conclusion**

The first part of this chapter showed how participants’ connection with the criminal justice system challenged their sense of self, as it subjected them to procedures ‘whose symbolic implications were incompatible with [their] conception of self’ (Goffman 1968:31). Having to show deference to officers and disclose intimate details to people in authority went deeply against the grain and participants’ sense of themselves as autonomous beings. Over and again, their accounts bore witness to how the criminal justice system conveyed ‘lowly images’ (Goffman 1968:30), with its constant ‘put-downs’ bringing about feelings of unworthiness and helplessness.

But set against this, and as the second part of the chapter shows, participants displayed a marked degree of resilience both in protecting the self and in gaining what was considered right. While personal identity was at risk throughout, participants fought the odds, or, in Goffman’s terms employed ‘methods to keep some distance, some elbow

room, between [themselves] and that with which others assume [they] should be identified' (1968:279). At a fundamental level then, the conflicts that occurred throughout each stage of the journey between arrest and release were not just isolated pockets of resistance but a determined struggle to survive humiliating and horrific encounters. Let Goffman have the last word on this when he writes that:

the practice of reserving something of oneself from the clutch of an institution is very visible.... Recalcitrance is not an incidental mechanism of defence, but rather an essential constituent of the self. (1968:279)

## Chapter 9

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### Implications for change

This research has shown the impact on people made subject to the criminal justice system, from the point of arrest on. The way in which a person is treated at each point of contact is crucial and the treatment accorded participants has been shown to have an enduring impact on their sense of self. Further, this impacts upon their chance of re-entering the community as well as their attitudes towards the criminal justice system and the broader society.

The forms of punishment vary from community based orders and home detention, to intensive supervision orders, work-camps and imprisonment forming what Findlay et al (1994:186) describe as ‘a complex set of interlinked processes and institutions’. The Mahoney *Inquiry into the Management of Offenders in Custody* maintains that regardless of the form punishment takes, few government activities can be said to ‘control the lives of citizens as comprehensively as the management of offenders’ (2005:451), while Mr. Quinlan, counsel assisting the inquiry, points out that in prison ‘the control is all encompassing and reaches into every aspect of an offender's life’ (ibid).

This chapter provides a number of suggestions for a more humane, open and fair criminal justice system with a focus on reducing harm and providing support and assistance to those subject to it. The first section provides a brief overview of the ways in which prisoners are prepared for community living, where I focus on restitution and reparation by prisoners, community involvement in re-entry and restorative prisons. The chapter

then provides an introduction to restorative justice and therapeutic jurisprudence procedures and discusses how these alternative processes can be used effectively throughout the criminal justice system.

Notwithstanding a number of diversionary and alternative sentencing regimes that provide opportunities for many people to reflect upon their lifestyle and make reparation, the prison population in Western Australia continues to rise, currently increasing at three times the national average, while the national average of prisoners who have previously be imprisoned is 57% (Australian Bureau of Statistics 2004: March Quarter). In other words, rather than prison being the place of last resort, it is the place where many people are taken when they cannot pay a fine, are unable to secure bail, waiting to be heard or sentenced, and a place where many return to. Arguments that prison should be a place of last resort have been made by authors such as Consedine (1999), Goulding (2004), Stern (1998), and are endorsed here. Rather than repeat them, I turn to the other side of the coin: the need to humanise prisons for those forced to enter them.

Winick's (2003) notion of therapeutic jurisprudence provides a basis for exemplary penal practice. He suggests that the law should 'value psychological health, should strive to avoid imposing anti-therapeutic consequences whenever possible, and when consistent with other values served by law should attempt to bring about healing and wellness' (Winick 2003 in Diesfeld and Freckelton 2003:26). Although Winick's call is focused towards judicial practices it could just as well apply to the whole of the criminal justice system, and especially to the prison environment where prisoners' personal wellness is

lost in the total institution, placed behind security and punishment needs. My argument is that therapeutic jurisprudence has implications from the point of arrest to the completion of sentence. It allows the focus to shift from punishment to problem solving and making the break from crime, and thus to respond to the purposes of rehabilitation in sentencing.

### **Rehabilitating Prisoners**

Currently prisons present the darkest side of the criminal justice system. As Findlay observes:

For those who do end up in gaol, and for those employed to manage them, the prison environment requires significant redevelopment, if inmates are not to leave prison more maladjusted than when they went in. Violent, inhuman, unsafe, confrontational and exploitative prison settings will distort social and moral messages that are consistent with crime prevention (Findlay 2004:2 unpublished notes).

This section argues for change in the way in which prisoners are prepared for a return to community living. My contention is that prisoner rehabilitation should be reviewed as a matter of urgency since the re-offending rates indicated in Chapter 2 show that 45 per cent of prisoners return to prison within two years (Statistics, adult re-offending rates: [www.justice.wa.gov.au](http://www.justice.wa.gov.au)). Added to this, imprisonment most often contributes to feelings that the community is unfair and unfeeling, thus fuelling resentment and anger.

International instruments<sup>32</sup> identify the purpose of imprisonment as being for the protection of society and the rehabilitation of prisoners, and as Coyle, (2002:61) suggests, in order for this to happen 'prison administrations need to achieve an appropriate balance

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<sup>32</sup> U.N. Basic Principles for the Treatment of Prisoners and the Standard Minimum Rules for the Treatment of Prisoners, and the European Prison Rules.

between security and those programmes which are more designed to enable prisoners to reintegrate into society'. Assistance with resolving homelessness, unemployment, relationship difficulties, being mentored by community leaders and being engaged in community reparative programs, all are ingredients of a prison environment with a focus on harm reduction and well-being. Whilst van Wormer maintains that 'community-based programs have much higher success rates, generally, than do prison programs' (2001:307), prison remains as the place where most crime-specific programs, such as the violent offenders and sex offenders treatment programs (VOPT and SOTP) are provided. Rehabilitating a person for community living, whilst they are in prison requires day-leaves and work-release orders, as well as other opportunities to mix with members of the public, prior to permanent release from custody. Minimum security prisoners are in a position where they can make a form of restitution to the community through engaging in daily supervised work activities at work sites and camps.

In a therapeutic environment, preparation for re-entry into the community could be practiced from the point of arrival at prison, regardless of the length of prison sentence. Further, it would make sense that all rehabilitative treatment is based on individual needs defined in cooperation with the prisoner and their network as soon as possible upon imprisonment. This approach places the prisoner as a social being, and encourages supportive others to assist in the process of re-communalisation – where a person regains valued membership and participation in community living.

To this end, prisoners and their family members and/or friends would be able to take part in facilitated case conferences with the aim of agreeing on a rehabilitation and release plan to promote pro-social behaviour, decision-making and community living skills. In this context, Brown (cited in Bottoms and Tonry 2002:325) maintains that prisoners ought to be held ‘under regimes which are healthy, not conducive to or tolerant of violence’. This means that prisons hold a position which would ‘promote contact with family...and the various associations of civil society’, thus providing conditions that enable prisoners to participate in public discourse and education (ibid). This approach finds voice in the Mahoney Inquiry’s Annexure Five<sup>33</sup> (2005:488) recommendation that ‘an offender's family must, so far as is reasonable and practicable in the circumstances and within the resources available, be recognised and involved in ...decisions related to sentence planning and management, and the rehabilitation and reintegration of the offender into the community; and ...planning for participation by the offender in programmes, services, and activities in the course of his or her sentence’.

An important example of such a process under the auspices of penal reform is provided by the initiative of Andrew Coyle, Director of the International Centre for Prison Studies. This involved a project with a number of English prisons exploring ‘the idea of creating a restorative prison by looking at the whole ethos of the individual prison’ (Coyle 2001:7). Coyle’s restorative justice prison concept has four main elements which collectively produce a therapeutic environment. These are:

- creating an awareness among prisoners of the impact of their crime on victims and the community

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<sup>33</sup> Recommendations submitted in closing submissions of counsel assisting in Inquiry.



- creating new directions for prisoners so that they can work for the benefit of others
- remodelling the way in which disputes within prison are handled
- building relationships with the community so that prisoners can more easily be reconciled and received back into them.

Since 1999 the Belgian prison system has been structured along restorative lines. Within Belgian prisons there is an emphasis on reducing harm with a concern that ‘punishment should not make the offender worse’ (Newell 2001:1). Newell argues that the restorative prison should operate as ‘a means towards empowering offenders to take responsibility for their actions and to make amends to their victims and their communities’ (2001:3).

Another international example comes from Ohio, where, according to Wilkinson, the Ohio Department of Rehabilitation and Correction has embraced community or restorative justice as a ‘framework governing correctional practices’. Here community service work ‘has become a mainstay of offender programming’, whereby offenders ‘rehabilitate low-income homes, plant flowers, train pilot dogs, and repair computers to be donated to schools’ (Wilkinson 2003:3). Wilkinson also points to situations in some prisons within Ohio in which prisoners participate in ‘victim impact panels where crime victims and survivors of crime describe their encounter’ and where the state has a ‘strong commitment to community, offender accountability, and victim input and participation’ (ibid).

This notion of restorative prisons could provide a foundation for working towards re-entry in a way that provides encouragement and support to prisoners as they prepare for release. Ideally this ought to begin at the commencement of their prison term.

### **Rehabilitation in the community**

The focus on treatment and rehabilitation has a wide lens, for in combination, therapeutic and restorative processes can provide an opportunity for offenders to feel satisfied with both process and outcomes, and challenge for offenders what Sykes and Matza (1957) refer to as the offender's 'neutralisations'. The *voluntary* taking of responsibility for one's actions is a cornerstone of restorative justice and therapeutic jurisprudence. Against this, there are a variety of strategies whereby offenders may deny their responsibility for a criminal activity; denial of responsibility, denial of injury, denial of victim, condemnation of the condemners, and appeal to higher loyalties. Maruna and Immarigeon (2004:14) suggest that 'the major correlates of desistance from crime identified in research...involve ongoing, interactive relationships that can take up most of an individuals waking life'. Further, Farrall (195:56) maintains that 'most of the research suggests that desistance occurs away from the criminal justice system'. Given this, successful rehabilitation needs to involve a broad multi-faceted approach to changing the lifestyle of an offender. As O'Brien (2001:119) maintains, mentors are needed who embody 'a rootedness in reality' and who exemplify 'survival and growth as a possibility'. Further, to be effective, rehabilitative practices need to consistently work towards full citizenship entitlements for offenders and ex-prisoners.

At present, full citizenship is unlikely to be achieved by many ex-prisoners because the impact of a conviction most often outweighs any move to rehabilitate. In essence, while the court and prison services may encourage prisoners to engage in rehabilitation programs, the record of criminal conviction limits opportunities for a productive lifestyle and full citizenship. For many convicted persons this can mean a ‘taking-away’ but not a ‘giving-back’ of full citizenship and, although the restorative justice process introduces a symbolic form of ‘welcoming back’ ceremony, it does little to counteract the detrimental effects of actually having a conviction recorded against one’s name. This is even more apparent in mainstream processes where the criminal justice system provides no ‘times-up’ – rather it becomes a continual process of an often subtle, but sometimes obvious, disenfranchisement. The ‘convicted’ person is unable in these circumstances to be redeemed, ensuring that any ‘debt’ to society will never be fully repaid regardless of the amount of punishment endured. As Garland (2002) suggests, doing the ‘time’ appears to be insufficient punishment for most communities. Hence, unless this problem is resolved through significant policy change, a record of conviction will remain a major impediment to successful rehabilitation.

Since this study began four years ago there have been continuous calls from the state government and the opposition as well as from media and the police for a ‘tough on crime approach’. For the past decade ‘law and order’ politics and local media have taken the West Australian community down the more punitive path towards a ‘lock them up and throw away the key’ approach. There is no evidence, however, to demonstrate that increased levels of imprisonment reduce criminal activity or the numbers of victims

produced. Within this context, restorative justice becomes both more important and more difficult to achieve.

### **Restorative Justice**

Two commonly used definitions of restorative justice come from Tony Marshall and Howard Zehr. Marshall describes restorative justice as ‘a process whereby all the parties with a stake in a particular offense come together to resolve collectively how to deal with the aftermath of the offense and its implications for the future’ (1995:5). Zehr suggests that restorative justice:

...creates obligations to make things right. Justice involves the victim, the offender, and the community in a search for solutions which promote repair, reconciliation, and reassurance (1990:181).

Restorative justice provides a more comprehensive view of crime than traditional or adversarial judicial processes. It views crime as more than law-breaking; rather it is a fracture in relations that harms the victim, community and the offender (Braithwaite 1998; Consedine 1999). Under restorative justice, key roles are given to the offender and victim and to those who are close to them, including community members, to collectively restore harmonious relations and heal the impact of the crime (Braithwaite 1998; Zehr 1990). Rather than seeing justice as a contest between parties, restorative justice looks at how much damage needs to be repaired, considers the means of restoring justice and assesses outcomes in relation to human needs rather than statutory requirements (Goulding and Steels 2002). Research has shown that restorative processes are more satisfying to stakeholders than current retributive practices (Braithwaite 1999; Maxwell and Morris 1993; Wachtel 1999). It invites people to participate voluntarily rather than

enforce or coerce their attendance and it sees the government's role as preserving public order, while the community's role is to build harmony (Consedine 1999). Simply put, the restorative justice process brings together victims, offenders and their support networks within a facilitated group conference<sup>34</sup> setting to attempt to repair the harm caused by an offence. The process is based on the underpinning philosophy of restorative justice, that of re-integrative shaming (as opposed to stigmatic shaming) of offenders within an environment of support (Braithwaite 1989:55). Braithwaite's (1989) theory of reintegrative shaming is best understood as a process which the individual bears a level of shame in a supportive environment. The focus is on the actions as negative while the person remains valued. Braithwaite (1989:14) maintains that 'shaming is the most potent weapon of social control unless it shades into stigmatisation' and suggests that 'the genius of restorative circles is their collective emotional dynamics' (2005:58). Braithwaite elaborates on the notion of re-integrative shaming, suggesting that 'individuals are more susceptible to shame when they are enmeshed in multiple relationships of interdependency' and adds that societies shame 'more effectively when they are communitarian' (ibid). It is stigmatisation which reduces the individual offender to Goffman's (1963) 'blemished character' not only stigmatised and marginalised but continually seen as dangerous and as ever likely to re-offend.

For offenders, this process aims to develop accountability, apology and an endeavour to lead a crime-free lifestyle. Its main purpose is to provide the opportunity for positive interaction between victims of crime, offenders and the networks of both parties. As a

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<sup>34</sup> Sometimes referred to as Community Group Conference, Family Group Conference or Reparative Mediation.

process, it insists on voluntary application and, in most cases, needs to be implemented prior to sentencing.

However, Johnstone (2002:29-31) provides a caveat to those aspirations when he warns that that restorative justice could bring more people into the criminal justice process and that communities could discriminate in favour of productive or important members over citizens of less importance. The possibility of using coercion to participate in a restorative process remains ever-present, although, I would argue, is no more likely to occur in restorative justice than at the arrest or during the police interrogation. Power differentials between participating conference members require stringent safeguarding during a conference to ensure the safety and enable equal space for comments and stories.

Braithwaite (1989:88) suggests that by emphasizing personal responsibility, restorative justice enables victims to participate and offenders to be treated as whole persons not simply the 'criminal'. The process benefits from the support of a court sympathetic to its ideals. In dealing with serious offending behaviour it is advantageous to combine restorative justice with the therapeutic jurisprudence approach, at the point of arrest, in court and at all official face to face encounters with the accused or convicted person.

### **Therapeutic Jurisprudence**

Wexler (2004:2) sees therapeutic jurisprudence as a perspective that starts by accepting that the law is a 'social force that produces behaviours and consequences'. As this research has shown, such consequences can be damaging. Therapeutic jurisprudence wants us to be aware of this and whether the law can be made or applied 'in a more

therapeutic way so long as other values, such as justice and due process, can be fully respected' (ibid). Wexler suggests this could bring to the table 'some of these areas and issues that previously have gone unnoticed', and offer the judiciary the opportunity to 'think about these issues and see if they can be factored into...law-making, lawyering, or judging' (ibid).

Winick maintains that every effort needs to be made to avoid damaging consequences and bring about 'healing and wellness' (Winick 2003 in Diesfeld and Freckelton 2003:26). Combined with restorative justice a therapeutic philosophy can be applied outside of the court as well as inside, for, as the Thames Valley project has shown (see discussion below), police officers are in a good position to see what may assist the accused from re-offending and to provide a referral prior to charges being laid.

### **Therapeutic and restorative practices in community policing**

Police officers are frequently called upon to confront or control people suspected of anti-social behaviour. At times they may be called upon to perform their duties whilst they themselves are subject to verbal and physical assault. Even so I would argue that current policing practices are sometimes unnecessarily adversarial, thus limiting the capacity of the police to resolve social conflicts and reduce harm. This can contribute to subjects feeling that they have been unfairly dealt with. This is the more worrying given that fair process is crucial to the legitimacy of the criminal justice process. As Tyler (1990:172) indicates, feeling that one has been 'unfairly treated' disrupts 'the relationship of legitimacy to compliance' even more than 'receiving poor outcomes'. In essence, if

unjust or unfair practices are encountered, the net result is likely to be non-compliance and resistance.

Arrest presents a particular challenge to community policing, for it is often the first point of contact that people have with the criminal justice system. It is thus crucial that just and fair practices should operate here and set the standard for what follows. When things go wrong and there is a confrontation between the arresting officer and the accused, charges relating to resisting arrest and/or assaulting an officer are often made. This sets in place a spiral of events whereby the alleged offender stands accused of further offences, triggering more resentment and counter responses. The arrest therefore needs to be managed in a less confrontational way as possible.

According to Charles Pollard, Chief Constable of Thames Valley Police, traditional policing practices in dealing with ‘suspects’ are to ‘nail’ them – a point that is particularly important given that the criminal justice system ‘was – and to many still is – the only formal tool for dealing with social conflict in our communities’ (Pollard, 1999:1) In contrast with this, Pollard (1999:2) suggests a more restorative justice approach to policing, capable of ‘drawing on the strengths of many different policing philosophies’ arguing that restorative justice provides police with:

the sort of rational, problem-solving response to social conflict that is highly resilient to the demands of different policing situations, and promotes more of the human, face to face contact with victims and offenders that so many officers intuitively recognize as essential to rebuilding social capital and community confidence (1999:166).



Pollard's 'rational, problem-solving approach' (1999:2) to policing involves officers taking the time and responsibility for resolving conflicts amicably within the neighbourhood, shopping mall or high street, and being seen not so much as having the authority to punish but rather the ability to provide fair treatment and allow grievances to be heard. This was the breakthrough for Thames Valley Police. Officers listened to what local people, and in particular young people, had to say about police culture and practices, especially in relation to the high proportion of arrests made towards members of ethnic minority groups (Pollard 1999). Within the Thames Valley jurisdiction restorative justice spread to include officer training in conflict resolution, problem-solving and facilitating restorative justice conferences. It was also used for the police service's own complaints and grievance procedures. As Pollard (1999:8) says of this approach, 'overall, it is its potential for re-defining the rights and responsibilities of people in communities, so that we can start to reintroduce the social cement which holds communities together, which can be its most significant prize'.

Implementing a more restorative justice approach from the point of arrest onward has real merit but it has to be combined with human rights, due process, and natural justice. The dangers of a piecemeal process are noted by Wachtel who observes that:

If systems are not innately restorative, then they cannot hope to effect change by simply providing an occasional restorative intervention. Restorative practices must be systemic, not situational... You can't be restorative with students and retributive with faculty. You can't have punitive police and restorative courts (1999:7).

*Diversion from the criminal justice process*

For the reasons outlined in this thesis, it is argued that it is important to divert as many people as possible away from the formal processes of the criminal justice system. Diversion can operate through police discretion via the use of cautioning and court diversion practices. Under the West Australian Strategic Plan 2001-2006, the police examine ways to provide a level of diversion for minor drug related crime. Recognising that ‘the police must tread a fine line between upholding the law and the treatment of drug addiction as a health issue,’ the strategic plan nevertheless goes on to state that ‘diversion schemes are likely to play an increasingly important role in the police treatment of drug-users’ (WAPS, Strategic Plan 2001-2006, 2001:6).

Findlay et al add a cautionary note here when they suggest that discretion enables the police service to act as gate-keepers, given that they stand between victims, offenders and the community where they ‘receive and interpret information in order that other stages of the process can be invoked or avoided’ (1994:95). That said, they point out that at pre-trial or pre-sentence diversion can be helpful in screening out a range of offenders. These include those who present a low risk of re-offending, people better placed on treatment programmes, and those with a potential to reform (Findlay et al 1994:206). They also recognise that for ‘other marginalised or vulnerable groups, when it comes to criminalisation (for example Aboriginal people, drug abusers, the mentally ill), diversification has not been developed to any large degree’ (ibid). This latter point is increasingly pertinent when more people with mental illness or intellectual disability come face to face with the police for minor crime.

In Victoria a formal diversion scheme operates whereby any offence triable summarily (except one which carries a mandatory sentence), where the offender admits guilt and where diversion 'is appropriate in all the circumstances' is eligible for admission to the Criminal Diversion Program operated by the Victorian Magistrates' Court (Popovic 2005:9). Under this scheme any person can initiate diversion but has to have the consent of the prosecution with the offence being 'deemed a matter appropriate for diversion by the presiding magistrate' (ibid). Significantly, upon successful completion of the programme by the offender 'the matter is struck out' (ibid).

For court diversion to be effective in reducing anti social and criminal behaviour it needs to involve a component whereby the offender can engage in a behaviour management or community education programme as appropriate. It is here that restorative practices would be advantageous as they would involve the offender, victim and community in the decisions and methods of resolution. In this respect, and to safeguard the interests of both victims and offenders, the Thames Valley process established a restorative justice consultancy that had oversight of police officer training and quality control of processes (Pollard 1999:7). A similar style of supervision could occur throughout Western Australia. Ideally court diversion could be integrated and supported at any stage following arrest and in the lead up to the first court appearance.

## **Court processes**

Under current court practices the adversarial nature of the court places the victim and offender in a position whereby neither party is able to fully participate in either process or outcome (Consedine and Bowen 1999; Strang 1999). In his comments on the current system, Judge Fred McElrea argues for change, stating that ‘criminal justice has been divorced from the community for far too long. Justice has come to be seen as a contest between the state and the defendant’ (cited in Consedine and Bowen 1999:56).

Against this adversarial contest are examples of alternative judicial interventions which include the Perth Drug Court and the Geraldton Alternative Sentencing regime. In these cases, a support team is usually attached to the court and the accused becomes part of a group of case-managed clientele. Here, the magistrate along with a judicial officer provides team leadership in seeking solutions, providing support and working to reduce the effects of crime on all concerned. Freiberg argues for the benefits of these problem-solving approaches, stating that in an ideal world ‘it would be pleasing to have, in every court, specialised services staffed by an adequate number of trained staff with the financial resources to meet the full range of offenders’ needs’ (2001:11). Freiberg maintains that this offers an alternative to ‘the sterile, costly and ultimately counter-productive punitive approaches which have resulted in dispirited court and correctional officers and bursting gaols’ (ibid). In Western Australia an element of restorative justice was introduced in 1993 during a trial project involving young offenders and their family members meeting to discuss the crime with juvenile justice team members.

The process in New Zealand and Perth involved the young people concerned taking responsibility for their actions, apologising to their victims and undertaking a form of restitution or reparation. In the New Zealand model the victim or a surrogate victim was present along with a person selected from the local community. In both the New Zealand and Perth models a single meeting of no more than two hours is given to resolving the crime and to finding solutions to suit the victim and community participants. Unfortunately, the brevity of the process limits the ability of juvenile justice teams to investigate underlying issues and to make recommendations for change. Furthermore, while the juvenile justice teams offer a beneficial alternative to adversarial court processes, they also present risks. For example, the potential for juvenile justice teams to have a net widening effect is recognised by Cant and Downey (1998:iv) who argue that some restorative teams deal with offences that could have been dealt with by a caution. They also point out that some cases that could have been dealt with by teams went to court. It is therefore important to use formal cautioning first and only take a person into a conference if cautioning is unlikely to be effective, with court being the option of last resort.

My argument is that procedures should follow the least restrictive and most participatory approach to resolving the aftermath of crime. For this to be effective, the following four conditions need to be met. First, adequate resources need to be made available to all courts to enable them to use a blend of problem-solving and restorative justice intervention. A restorative and problem-solving process takes longer than an ordinary court and this has to be recognised. Resources also need to be provided for the support of

offenders and victims participating in the process. Second, it is important that an independent evaluation is undertaken, not only to assess outcomes but also to ensure that the principles of restorative justice are being followed. The process requires safeguards to ensure that it does not become punitive or vindictive. Third, attention must be given to due process and natural justice to ensure that the rights of all participants are safeguarded and that they can access appeal courts and benefit equally from the available resources should they require support and assistance. Finally, re-integrative shaming needs to be used cautiously, underpinned by a supportive approach and within a safe and secure environment. This is to ensure that no situation be allowed to rise where the offender is faced with stigmatic shame and humiliation.

Within this restorative and therapeutic framework it is important that communities are able to develop models suited to their local needs. In Western Australia several restorative and problem-solving procedures are used in various court settings including the Perth Drug court and the Geraldton Alternative Sentencing Regime. Also, a Circle Court was initiated by an Aboriginal community in the North-West of Western Australia at Yandeyarra. In this instance, two elders sit with the magistrate, prosecutor and defence counsel as the offender is invited to speak about his or her crime. The elders and the magistrate deliberate in private about possible sentencing options followed by the magistrate's announcement of the sentence to the offender (Marchetti and Daly 2004:4).

All of these court procedures involve the offender participating to a varying degree where he or she is encouraged to make comment and to challenge the behaviour which has led

to their offending. While not all of the above courts provide opportunity for the victim to be present they have elements of reparation and restitution to the local community.

In the following discussion I provide three illustrations of restorative justice to further draw out the principles of restorative justice.

### *The Community Group Conference*

The family group conferencing model or, as it is often called, the community group conference, is one of the most widely used restorative practices. The conference can only begin when the offender admits guilt (or in some jurisdictions admits liability or declines to deny guilt) and the victim or a surrogate agrees to participate. At any time during the process the offender or victim may choose to end the conference.

All participants within a conference are able to hear the stories behind the crime and its impact upon the victim and their family. Apology is given, restitution and reparation are dealt with, criminal behaviour is addressed and a mutually agreeable outcome is sought. Ideally, all the parties need to agree to the plan for reparation, thus increasing commitment to it as a just resolution (McElrea, 1994:99-101). The process takes longer than a court hearing and requires an adjournment to enable enough time to facilitate the process to a satisfactory completion. The outcomes ought to reflect the needs of all participants and the key performance indicators should reflect the level of satisfaction with both process and outcomes as well as the compliance of the offender to the agreed outcomes.

*The communitarian model of restorative and transformative justice: the Perth example*

A communitarian model of restorative and transformative justice (R&TJ) for adults on serious criminal charges was developed and trialled in the Court of Petty Sessions in Fremantle and Central Law Courts in Perth, Western Australia between May 2000 and September 2002 (Goulding and Steels 2002). In this model, offenders who pleaded guilty in court to specified offences were able to be referred to the project. The process included a holistic problem-solving approach with offenders, as well as a community group conference involving victims, offenders and their supports.

Within this model, and prior to any meeting with victims, the offender and his or her support networks of family and/or friends met with the R&TJ facilitators in order to glean a snapshot of the offender's lifestyle and identify any underlying issues contributing to offending behaviour patterns. In this way the facilitators were able to seek solutions to problems and suggest achievable life goals. This information was then presented at the community group conference in the presence of the victim, thus contributing to his or her overall understanding of events which led to the crime. In turn, the victim was able to make recommendations regarding possible outcomes. Summary reports of both the transformative and restorative processes were then presented to the court and magistrates were able to make more informed decisions regarding sentencing, restitution and court ordered therapeutic programmes.



### *Aboriginal Courts and sentencing circles*

Makkai suggests that the aim of indigenous courts and other justice processes has been to make the court system 'more culturally appropriate, to engender greater trust between indigenous communities and judicial officers, and to permit a more informal and open exchange of information about defendants and their cases'(cited in Marchetti and Daly 2004:1).

In 2002 the Aboriginal Justice Advisory Council's initiative for a court for more serious or repeat offenders came into being at Nowra. This court was designed to 'achieve full community involvement in the sentencing process'(Aboriginal Justice Advisory Committee 2000:1). In this court and later courts at Shepperton and Broadmeadows (referred to as Koori courts) the setting is less formal. In these courts the presiding officer sits at a table with all other participants rather than on the bench and a community Elder advises the Magistrate on the kind of sentence that might be appropriate in each case. Also, an Aboriginal Justice Officer is attached to each of the Koori courts to assist in the problem-solving and case follow-ups. According to the Victorian Aboriginal Legal Service;

The most important difference between the Koori Court and the normal court is that the Koori Court gives Indigenous people the chance to have a say. Offenders can talk about their past, and why they did things, and what they can do about it. Offenders' families and community members can give their view ([www.vals.org.au/faqs/kooricourt.htm](http://www.vals.org.au/faqs/kooricourt.htm)).

### **Concluding comments**

This chapter has pointed to alternative processes throughout that can help to reduce the negative consequences of involvement with the criminal justice system. As described in

Chapter Three, offenders while usually face a daunting journey, under conditions from which they can emerge significantly damaged. This lies at the heart of the problem, and my suggestions thus are for a process which is more able to offer support and less likely to stigmatise and label. People entering the criminal justice system will, from time to time undoubtedly have to rely upon the good-will of individuals to reduce the damaging impact of their experience. However, what is being suggested in this chapter is a philosophical shift which can be systemically applied.

The experiences of the participants in this study challenge the criminal justice system to fundamentally change the way it treats its subjects. Most of them were left with long-lasting feelings of injustice. The few who experienced an encouraging hand from police, court, or prison officers felt differently. They, and their family members asked for supportive practices to be standard, enabling people to be more involved in the process of having justice delivered to them.

In Chapter Eight the implications of the prolonged emotional, social and material damage to individuals and their families were discussed. Personal loss, discrediting, labelling and degradation were deep and widespread, and counteracted any attempt at rehabilitation. The impact of being subject to control and surveillance over a prolonged period of time erodes people's sense of self and renders them defensive and suspicious. For the system to damage a person, and their family, and then expect them to respond responsively as citizens, is asking a great deal.

What has been outlined here, and throughout the thesis is the need for a firm and fair criminal justice system built on restorative justice and therapeutic problem-solving approaches. However, it is important to emphasise that these changes cannot be done piecemeal, in haste or without adequate and secure resources. They are not the answer in themselves, but rather a process, and take considerable energy to bring about change. For them to be effective, the entire criminal justice process from arrest through court, prison and rehabilitation, needs long term vision and bi-partisan commitment well beyond the four year political cycle of state politics.

*There was a green hill far away,  
outside the courtroom door,  
and one could smell the flowers there  
while looking at the floor*

*There was a green hill far away  
beyond the prison wall,  
and one could see the trees and vale  
without looking out at all*

*I looked at the hill so far away,  
when released from the prison wall.  
It was barren and uninviting,  
not worth a look at all.*

*If only there was a green hill  
outside the prison wall,  
with lots of people gathered there,  
with smiles that said it all.*

*Bs*

## Appendix 1

Letter of request to participate

---

Dear

This letter is to request your involvement in my research.

***‘Feelings and experiences of persons publicly declared guilty.’***

The aim of the research is to identify the many feelings and experiences that people have when facing the court’s declaration of guilt. I wish to know how the process impacts upon the participants, and if the process is seen to be effective, productive or otherwise.

By identifying some of the problems encountered with the current court processes I hope to be in a position to make recommendations to the courts regarding the process of sentencing and more effective ways of dealing with people declared guilty.

I would like to describe the *actual feelings and experiences of participants* as they recall the process of being publicly declared guilty. I have some personal experience of this process as I have been declared guilty in the Supreme Court of Western Australia. I have spent time in prison, and have had to plan for a different future among different people. I’m aware of the impact of the declaration of guilt upon family members especially children and partners.

If you agree to take part in this research I hope to interview you at your convenience. The interview will be at a place and time where you feel comfortable. I will take notes during the interview. Real names will not be used and any information which could be used to identify you will not be used in the written report. You will have the opportunity to read the notes of your interview and remove any or all of the information you have given.

For ethical reasons I require a signed consent form. I will bring the consent form for your signature on the day of the interview. If you have any questions about the research I will answer them before the interview begins. All information provided is treated as confidential and will not be released by the researcher unless required to do so by law.

Yours sincerely,

Brian Steels.

## Appendix 2

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### Consent Form for participation in the Research being conducted by Brian Steels titled

#### *‘Feelings and experiences of persons publicly declared guilty.’*

- This research project aims to identify the experiences and feelings of people who have been publicly declared guilty, regardless of how they plead. By gathering this information I hope to be in a position to provide a clear understanding of the impact of the declaration of guilt through the court process.
- I will be seeking information from participants regarding their experiences and feelings leading up to, during and following being publicly declared guilty. Some of the feelings that I would look at include frustration, anxiety, guilty, resentment, isolation and loss and the feelings associated with support such as relief, compassion, empathy, encouragement and hope.
- I would also like to gather further information regarding the experiences that occur including those among family, work and leisure relationships, social activities, and issues to do with the process of going through the courts. There is limited information to date, about how people experience the court process, and about the impact of the proclamation, and a guilty finding, on the individual. I would like to gather information on the feelings and experiences of ‘justice’ and ‘fairness’ by participants.
- For the purpose of gathering meaningful information I will make notes during the interview. Your own name will not be used and confidentiality is assured. No information that may identify participants will be used in the research. Notes of all interviews will be returned to participants so that they may remove part or all of their given information. The information will be used as the basis for my PhD thesis (title above). I will also make recommendations based upon the findings of this research.
- My supervisor and I are happy to discuss with you any concerns you have on how this study has been conducted, or alternatively you may contact Murdoch University’s Ethics Committee on 9360 6677.

I understand that all information provided is treated as confidential and will not be released by the researcher unless required to do so by law.

I, ....., have understood the information above and any questions I have asked have been answered to my satisfaction. I agree to participate in this research. I realise that I may withdraw at any time without prejudice. I agree that research data gathered for the project may be published provided my name or other identifying information is not used.

Participant  
Researcher

Date  
Date

---

### Appendix 3

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#### **Consent Form for family member participation in the Research being conducted by Brian Steels titled**

##### ***‘Feelings and experiences of persons publicly declared guilty.’***

- This research project aims to identify the experiences and feelings of people who have been publicly declared guilty, regardless of how they plead. It also aims to identify feelings and experiences of some family members if there is informed consent by both parties that this could occur. By gathering this information I hope to be in a position to provide a clear understanding of the impact of the declaration of guilt through the court process, upon the person declared guilty and in some instances, upon their family member.
  - I will be seeking information from participant’s family members regarding their experiences and feelings leading up to, during and following the declaration of a family member being publicly declared guilty. Some of the feelings that I would look at include frustration, anxiety, guilty, resentment, isolation and loss and the feelings associated with support such as relief, compassion, empathy, encouragement and hope.
  - There is limited information to date, about how family members of people publicly declared guilty, and their experience of the court process, the impact of the proclamation, and a guilty finding, on the family member. I would like to gather information on the feelings and experiences of ‘justice’ and ‘fairness’ by participant family members.
  - For the purpose of gathering meaningful information I will make notes during the interview. Your own name will not be used and confidentiality is assured. No information that may identify any participant or family will be used in the research. Notes of all interviews will be returned to participants so that they may remove part or all of their given information. The information will be used as the basis for my PhD thesis (title above). I will also make recommendations based upon the findings of this research.
  - My supervisor and I are happy to discuss with you any concerns you have on how this study has been conducted, or alternatively you may contact Murdoch University’s Ethics Committee on 9360 6677.
- 

I understand that all information provided is treated as confidential and will not be released by the researcher unless required to do so by law.

I, ....., have understood the information above and any questions I have asked have been answered to my satisfaction. I agree to participate in this research. I realise that I may withdraw at any time without prejudice. I agree that research data gathered for the project may be published provided my name or other identifying information is not used.

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Participant

Date

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Researcher

Date

## Appendix 4

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### Interview Prompts

**Code # 00**

**F or M**

**Approx age      between   x yrs and   x yrs**

**Born**

**Australian Citizen   Y or N**

**First language**

**Optional Q .          Charged with**

#### **1. Plea**

At what court? Magistrates, District, Supreme?      **M   D   S**

And was this different to how you really wanted to plead? **Y   N**  
***Can you tell me more about that?***

Did you have a lawyer to assist with this?

Have you ever experienced prison at any stage / or before this?

Before we go onto the court in more detail, can we speak about life for you today?

#### **2. Your life today**

Can you tell me in your own words what life is like for you since being you was found guilty? Prompts -

housing,  
relationships,  
money,  
fears,  
work,  
safety issues,  
anything else?

If the interview is conducted in prison – can you tell me about this place first



Prompts – as above plus - programmes, treatment and welfare, friendships, anything else?

### **3. Experiences regarding relationships among family, friends, work and leisure associates.**

Can you tell me about your experiences within your family when you began going through the courts?

Prompts –

- Children
- Partner
- Parents
- Workplace
- School

*Prompt for those who have experience of prison –*

*What about when you were doing time...*

*Who is there for you most of the time?*

### **4. Feelings regarding both people and places.**

I would like to talk to you now about some of the feelings you have or that you had from the time of your arrest through to now.

Can we begin at the time of the arrest, or even before that if you want. What did it feel like?

Prompts.

- during arrest,
- at the police station,
- at home,
- going to court for each appearance,
- among your family
- going to clubs, pub, staying at home.
- going to prison – prompts
- visits etc

### **5. And about the court**

Can you now say in your own words, what it felt like going to court for the very first time,

and then when you were found guilty?

Prompts

Reporting in  
First steps into the courtroom  
Charges read  
Lawyers and Judge  
Jury

Were any other family or friends present?

Did you know what was happening in the court during all of that? How?

Had you already been told what to expect? Who by?

Was this advice from..... about the court appearance different to what you experienced?

In what way?

Regarding your and your relative's treatment by the court, how would you describe it?

Prompts

Process fair, honest, just,  
Outcomes, what you expected, fair,

## **6. About the Victim(s)**

I'm wondering if you ever had a chance to offer an explanation to your victim.

Would you ever have liked to have meet with him or her prior to the court and being sentenced?

What would you have said to them?

Why?

## **7. About you and your future**

do you think that you can tell me some of your future plans or dreams? What you may like to do soon, a little later in life perhaps,

Prompts

Relationships,  
Money  
Children  
Health  
Travel  
House  
Security

8. Is there anything else that you feel you would like to say but I haven't asked?

9. Closure and thanks.

Thank you. I'll get my notes and your comments back to you so as you can agree or not that it is an accurate record of our conversation, or if you feel that I haven't put things as you would prefer.

My end Notes.

## Appendix 5

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### Interview Prompts for relative\*

\*to be referred to by their first name

**Code # F 00**

**F or M**

**Approx age      between   x yrs and   x yrs**

**Born**

**Australian Citizen   Y or N**

**First language**

**Optional Q .      Charged with**

#### **1. Plea**

Do you know at what court? Magistrates, District, Supreme?      **M   D   S**

And was this different to how they wanted to plead? **Y   N**

***Can you tell me more about that?***

Did they have a lawyer to assist with this?

Before we go onto the court in more detail, can we speak about life for you today?

#### **2. Your life today**

Can you tell me in your own words what life is like for you since your relative was found guilty? Prompts -

housing,  
relationships,  
money,  
fears,  
work,  
safety issues,  
anything else?

### **3. Experiences regarding relationships among family, friends, work and leisure associates.**

Can you tell me about your experiences within your family when you relative began going through the courts?

Prompts –

- Children
- Partner
- Parents
- Workplace
- School

*Prompt for those who have experience of a relative in prison –*

*What about when they were doing time...*

### **4. Feelings regarding both people and places.**

I would like to talk to you now about some of the feelings you have or that you had from the time of your relative's arrest through to now.

Can we begin at the time of their arrest, or even before that if you want. What did it feel like for you as a relative?

Prompts.

- during arrest,
- at the police station,
- at home,
- going to court for each appearance,
- among your family
- going to clubs, pub, staying at home.
- going to prison – prompts
- visits etc

### **5. And about the court**

Can you now say in your own words, what it felt like going to court for the very first time with them?

and then when they were found guilty?

Prompts

Reporting in  
 First steps into the courtroom  
 Charges read  
 Lawyers and Judge  
 Jury

Were any other family or friends present with you for support?

Did you know what was happening in the court during all of that? How?

Had you already been told what to expect? Who by?

Was this advice from..... about the court appearance different to what you experienced?

In what way?

Regarding your and your relative's treatment by the court, how would you describe it?

Prompts

Process fair, honest, just,  
 Outcomes, what you expected, fair,

## **6. About the Victim(s)**

I'm wondering if you ever had a chance to offer an explanation to your relative's victim.  
 Would you ever have liked to have met with him or her prior to the court and being sentenced?

What would you have said to them?

## **7. About you and your future**

Do you think that you can tell me some of your future plans or dreams for yourself and your relative?

Prompts

Relationships,  
 Money  
 Children  
 Health  
 Travel  
 House  
 Security

## **8. Is there anything else that you feel you would like to say but I haven't asked?**

## **9. Closure and thanks.**

## Glossary

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The language and rituals of the court and prison systems are filled with jargon and traditional terminology. Many words encountered in this study have a history dating back to British courts and colonial Australia, while others are contemporary Australian or have their origins on the street.

- *Bailed* – free from custody, released on a surety
- *Beak* – judge
- *Blade* – a manufactured sharp object used as a weapon for the street or prison
- *Brief* – a lawyer or barrister
- *Bro* – an affectionate name for a fellow prisoner, but mostly used by and among Aboriginal prisoners
- *Brought up* – to appear in court (brought up from the holding cells below the courtrooms)
- *Cat* – gay by choice in prison or on the street
- *Chokey* – punishment cells (from choke, strangle)
- *Cop it sweet* – to put up with the treatment or punishment
- *Cover* – an alibi or person prepared to provide an alibi
- *Cut a deal* – make a deal with anyone, police, lawyer, prison authorities, for a benefit
- *Dog* – an informer
- *Double up* – two or more people in one cell

- *Down the back* – punishment cells usually in a section of the high security wing of a maximum security prison
- *Drunk's lagging* – a short sentence
- *Going down* – found guilty
- *Hit* – one dose of injected substance
- *Fit* – a needle used for injecting
- *Filth* – police
- *Gear* – several doses of illegal substance
- *lashed* – punishment by a partner (usually referring to when a partner has failed to visit or write)
- *lag* – an old prisoner
- *lagging* – a sentence
- *Meat truck* – prisoner transport, a large truck with solid benches and no windows.
- *Medics parade* – prisoners attend the medical clinic once they have been referred to the medics parade.
- *Muster* – prisoner count
- *On the Bench* – judge or magistrate presiding over the case
- *On the Grille* – to stand by, or prisoner standing by, the 'grilled door' between one section of a prison and another.
- *On the door* – prisoner to stand by the cell door
- *On my case* – frequently being told to do something by a person not necessarily having supervisory responsibility – a partner, friend, staff.



- *Paroled* – released from custody on certain conditions
- *Plea bargain* – when the police/lawyer encourage an accused person to plead guilty to an alleged offence within a less severe sentencing range, even if the offence was not committed by the person, rather than face a more serious charge where there is the possibility of a harsh penalty.
- *Pigs* – police
- *Piss test* – a urine sample collected for testing of illegal substances
- *Pro bono* – a fee waived service by a lawyer or their firm
- *Ramp* – search of cell by several officers (*rampage* through the cell and personal items)
- *Rat* – a tell tale, less serious than a *dog*. Rats can be trusted at times.
- *Rock spider* – a paedophile (the *spider* that sat down beside *her*)
- *Screws* – prison officers
- *Screw-warder* – prison officer, a term given to i) a warder in the Scottish prison system where prisoners had to turn a large crank handle on a box that counted the turns, as a part of their punishment. The warder was able to make the task more difficult by tightening the screws on the machine, and ii) the warder who had the job of tightening the thumbscrews to obtain a confession
- *Screwed* – to be put at a disadvantage or to have things made more difficult whilst in prison (from the tightening of the screw)
- *Slot* – cell
- *Slurpy* – oral sex
- *Sniff* – a dose of glue or petrol used for sniffing

- *Spend* – the weekly list of items that have been ordered from the prison shop
- *Squat* – a place to sleep for the night off of the street
- *Stand down* – order to the prisoner from the judge following sentencing
- *Street doctor* – the doctor and staff who attend various locations around the city, such a parks and reserves, where a street present person may attend for assistance.
- *Super's parade* – Prisoners who are in receipt of a prison charge appear before the Superintendent of the prison to have their charges heard and dealt with.
- *Suit* – a person in authority, usually referring to either someone from head office or a detective visiting the prison to ask questions.
- *Swab* – a mouth wipe to collect prisoners DNA sample
- *Tamp* – a paedophile (from to *tamper* with a child)
- *Taste* – a sample of illegal substance
- *Verbal* – a written statement, produced by the police, allegedly taken *verbatim* from the person of interest. The police then strongly encourage the person to sign it rather than have a more serious charge applied with more severe consequences

## Bibliography

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Adler, F., (1976) *Sisters in Crime: The Rise of the New Female Criminal*. McGraw Hill, New York.

Adler, P., and Adler, P., (1997) *Constructions of Deviance*, Wadsworth Publishing Company, California.

Agnew, R., (1990) 'The origins of delinquent events: An examination of offender accounts'. *Journal of Research in Crime and Delinquency*, 27, 267-294.

Agnew, R., (1994) 'Techniques of neutralisation and violence', In *Criminology*, 32, 555-580.

Athens, L., (1980) *Violent Criminal Acts and Actors: A symbolic interactionist study*, Routledge, London.

Atherton, T.J., (2001) *Managing Police Discretion: Incorporating the Western Australia Cannabis Cautioning Mandatory Education System*. Paper for the National Centre for Education and Training on Addiction. <http://www.nceta.flinders.edu.au/>

Aungles, A., (1994) *The Prison and the Home*, Institute of Criminology, University of Sydney Law School.

Australian Bureau of Statistics, Incarceration Rates, June 2004.

Australian Bureau of Statistics, Incarceration Rates, March 2005.

Barbalet, J., (2001) *Emotion, Social Theory, and Social Structure. A Microsociological Approach*, Cambridge University Press, Cambridge.

Bateson, C., (1974) *The convict ships, 1787-1868*. 2nd ed. A.H. and A.W. Reed. Sydney

Bazemore, G., and Erbe, C., (2004) Reintegration and Restorative Justice: Towards a theory and practice of informal social control and support in Maruna & Immarigeon (2004) *After Crime and Punishment: Pathways to Offender Reintegration*. Willan. Devon UK.

Becker, H., (1966) 'Labelling Theory Reconsidered', in *Outsiders: Studies in the Sociology of Deviance*, Free Press, New York.

Berger, P., and Luckmann, T., (1967) *The Social Construction of Reality*, Penguin Books, UK.

Beresford, Q., and Omaji, P. (1996) *Rites of Passage: Aboriginal youth, crime and justice*, Fremantle Arts Centre Press.

- Bianchi, H., 1(994) 'Abolition: Assensus and Sanctuary' in *A Reader on Punishment*, Duff, A., and Garland, D., (Eds), Oxford University Press, Oxford.
- Black, D., (1991) *The House on the Hill: A History of the Parliament of Western Australia 1832-1990*, Parliament of Western Australia, Perth.
- Blagg, H., & Wilkie, M. (1995) *Young People and Police Powers*, Australian Youth Foundation, Sydney.
- Blagg, H. (1998) Restorative Visions and Restorative Justice Practices, Conferencing Ceremony and Reconciliation in Australia. *Current Issues in Criminal Justice*, 10 (1).
- Blagg, H. (2001) *Indigenous Over-Representation in the Criminal Justice System*. Crime Research Centre, UWA. Perth.
- Blomberg, C. and Cohen, S., (Eds) (1995) *Punishment and Social Control: Essays in Honour of Sheldon L Messinger*, Aldine de Gruyter. New York.
- Blumer, H., (1969) *Symbolic Interactionism: Perspective and Method*, University of California Press, Berkeley, USA.
- Bowen, H., and Boyack, J., (1999) 'Community versus State in New Zealand', Unpublished Conference Paper, ANU February 1999.
- Bowen, H., and Consedine, J., (Eds) (1999) *Restorative Justice Contemporary Themes and Practice*, Ploughshares Publications, New Zealand.
- Bozovic, M., (Ed) (1995) *The Panopticon Writings*, Verso, London.
- Braithwaite, J., (1989) *Crime, Shame and Reintegration*, Cambridge University Press.
- Braithwaite, J., and Braithwaite, V., (2001) Just and Loving Gaze in Ahmed, E; Harris, N.; Braithwaite, J. and Braithwaite, V., (Eds) *Shame Management Through Reintegration*. Cambridge University Press. Cambridge.
- Broadhurst, R., (1988) 'Aboriginal and Non-aboriginal Recidivism in Western Australia: A Failure Rate Analysis' in *Journal of Research in Crime and Delinquency*, Vol 25, No 1, February 1988.
- Brown, D., and Wilkie, W., (2002) *Prisoners as Citizens*, Federation Press. Sydney.
- Burns, T., (1992) *Erving Goffman*, Routledge, London.
- Carlen, P., (1994) 'Crime, Inequality and Sentencing', in *A Reader on Punishment*, Duff, A., and Garland, D., (Eds.) Oxford University Press, Oxford.

- Carlen, P., (2002) *Women and Punishment, The struggle for Justice*, Willan Publishing Oxford.
- Christie, N., (1993) *Crime Control as Industry*, Routledge, London.
- Cicourel, A., (1968) *The Social Organization of Juvenile Justice*, Wiley Publishing, New York.
- Cohen, B., Eden, R., and Lazar, A. (1991). *The Efficacy of Probation Versus Imprisonment in Reducing Recidivism of Serious Offenders in Israel*. Journal of Criminal Justice. 19: pp. 263-270.
- Consedine, J., (1991) *Restorative Justice Healing the Effects of Crime*, Ploughshares Publications, New Zealand.
- Correctional Services of Canada (2004) *The impact of time served and custody level on offender attitudes* [http://www.csc-scc.gc.ca/text/pblct/forum/e073/e073d\\_e.shtml](http://www.csc-scc.gc.ca/text/pblct/forum/e073/e073d_e.shtml)
- Coyle, A., (1994) *The Prisons We Deserve*, Harper Collins Publishers, London.
- Coyle, A., (2001) *The Restorative Prison Project*, 'The Myth of Prison Work', International Centre for Prison Studies, King's College, London.
- Coyle, A., (2001) 'Prisons and the Democratic Process', Unpublished conference paper, New Initiatives in Penal reform and Access to Justice, Hyderabad, India, 20<sup>th</sup> October, 2001.
- Cribbin, J., (1984) *The Killing Times. The Conniston Massacre 1928*, Fontana. Sydney.
- Crites, L. (1976) *Women Offenders: Myth is Reality*. Lexington Books, Lexington, MA.
- Cromwell, P., (1996) *In Their Own Words: Criminals on Crime*, Roxbury Publishing Company, California.
- Cusson, M., and Pinsonneault, P., (1986) 'The decision to give up crime' In Cornish, D., and Clarke, R., (Eds.), *The reasoning criminal: Rational choice perspectives in offending*. New York: Springer-Verlag.
- Daly, K., (1999) 'Reassessing the Relationship between Restorative and Retributive Justice', Unpublished Conference Paper, ANU February 1999.
- Dandeker, C., (1990) *Surveillance, Power and Modernity*, Polity press, Cambridge.
- Davis, K.C. (1969) *Discretionary Justice*. Greenwood Press. Westport.

Dead Persons Society Website Project (2004) website 2004.

Deaths in Custody Watch Committee (WA), (2001) *Report to the 25<sup>th</sup> Session of the Committee Against Torture*.

Deaths in Custody Watch Committee of WA (2002) *Submission to the United Nations Committee Against Torture (UNCAT) November 2002*.

Department of Justice. (2002) *Profile of Women in Prison* Report by the Western Australian Department of Justice.

Department of Justice. (2004) *Annual Report 2004*. Western Australian Govt. Press.

Dreyfus, H., and Rabinow, P., (1983) *Michel Foucault : beyond structuralism and Hermeneutics*, 2nd ed. University of Chicago Press, Chicago.

Duff, R.A. (1999) 'Penal Communities' in *Punishment and Society*, The International Journal of Penology, Vol 1, No 1, July 1999.

Duff, R.A., and Garland, D., (1994) *A Reader on Punishment*, Oxford University Press, Oxford.

Duguid, C., (1978) *No Dying Race*, Rigby, Adelaide.

Durkheim, E. (1951) *Suicide: A Study in Sociology*, The Free Press, New York.

Elliot, I. (1978) *Moondyne Joe*, University of Western Australia Press. Nedlands.

Edgar, K and O'Donnell, I. (1998) 'Mandatory Drug Testing in Prisons - An Evaluation'. *Research Findings*. No. 75. Home Office Research and Statistics Directorate.

Farrall, S. (1995) *Why do people stop offending* Scottish Journal of Criminal Justice Studies, 1:51-9.

Fatic, A., (1995) *Punishment and Restorative Crime Handling*, Ashgate Publishing Ltd., England.

Felson, R., and Tedeschi, T., (1993) *Aggression and Violence: Social Interactionist Perspectives*, American Psychological Association, Washington, DC.

Feinman, C. (1980) *Women in the Criminal Justice System*. Proeger Press, New York.

Findlay, M., Odgers, S., Yeo, S., (1994) *Australian Criminal Justice*, Oxford University Press, Oxford.

Freiberg, A., (2000) Guerrillas in our midst? Judicial Responses to Governing the Dangerous, in Brown, M, and Pratt, J. (eds) *Dangerous Offenders*. Routledge, London.

Freiberg, A., (2001) 'Problem Solving Courts' in *Journal of Judicial Administration* 2001 pp8-12

Finnane, M., (1997) *Punishment in Australian Society*, Oxford University Press, Melbourne.

Foucault, M., (1977) *Discipline and Punish*, Penguin Group, London.

Foucault, M. (1989) *Madness and Civilisation*, Routledge Classics, London.

Francis, V., (2001) *The Restorative Prison Project: Discussion Paper Two*, 'Restorative Practices in Prison – A Review of the Literature, Paper one: Work with Victims', International Centre for Prison Studies, King's College, London.

Garfinkel, H., (1967), *Studies in Ethnomethodology*, Prentice-Hall, Englewood Cliffs.

Garfinkel, H., (1956) 'Conditions of Successful degradation ceremonies', *American Journal of Sociology* 61, 420.

Garland, D., (1990) The Sociology of Modern Society in *Punishment in Modern Society A Study in Social Theory*, Clarendon Press, Oxford.

Garland, D., (1997) 'Governmentality and the Problem of Crime', in *Theoretical Criminology*, Sage Publications.

Garland, D., (2001) *The Culture of Control: Crime and Social Order in Contemporary Society*, Oxford University Press.

Garland, D., (2002) 'Ideology and crime: a further chapter in Ideology', *Crime and Criminal Justice*, Bottoms and Tonry, (Eds). Willan Publishing.

George, A., (1991) *Women and the law: proceedings of a conference held 24-26 September 1991*, Institute of Criminology, Canberra.

Giddens, A., (1971) *Capitalism and Modern Theory: An Analysis of the Writings of Marx, Durkheim and Max Weber*, Cambridge University Press, Cambridge.

Glazer, B., and Strauss, A., (1967) *The Discovery of Grounded Theory: strategies for qualitative research*, Walter De Gruyter Inc., New York.

Godber, J., (1977) *John Howard the philanthropist*, Arts and Recreation Department Bedfordshire County Council, Beds, England.

Gottfredson, D.M., Gottfredson, M.R. and Garofalo, J. (1977). *Time Served in Prison and Parole Outcomes Among Parolee Risk Categories*. Journal of Criminal Justice. 5: pp. 1-12.

Goffman, E., (1963) *Stigma: Notes on the Management of Spoilt Identity*, London. Penguin Books.

Goffman, E., (1968) *Asylums*, Pelican, New York.

Goffman, E., (1971) *The presentation of the self in everyday life*, London. Penguin Books.

Goulding, D., (2002) *Recapturing Freedom: Issues related to the release of long-term prisoners into the community*, Unpublished Ph.D. Thesis, Murdoch University.

Goulding, D., (2004) *Severed Connections: An exploration of the impact of imprisonment on women's familial and social connectedness*, Murdoch University Print.

Goulding, D., and Steels, B., (2002) 'Researching, Developing and Servicing a Communitarian Model of Restorative Justice within a Bureaucratic Framework', Unpublished paper, ANZSOC Conference, Brisbane, 2002.

Green, R., (1998) *Justice in Aboriginal Communities – Sentencing Alternatives*, Pierich Publishing, Saskatoon, Canada.

Greenberg, D. M., Da Silva, J., and Loh, N., 'Evaluation of the Western Australian Sex Offender Treatment Unit (1987 - 1999): A Quantitative Analysis. Forensic Research Unit. University of Western Australia.

Hakin, C., (1987) *Research Design. Strategies and Choices in the Design of Social Research*. Allen and Unwin. London.

Haining, C. (1996) 'Women in Prison: The Stripping of Rights'. *Women, Power, and Therapy: Issues for Women*. The Hayworth Press NY.

Harding, R., (2000) *The psycho-social environment of prisons and its relationship to Recidivism*, A report commissioned by the Criminology Research Council 2000. Crime Research Centre, University of Western Australia

Harding, S., (Ed), (1987) *Feminism and Methodology: Social Science Issues*, Indiana University Press.

Hart, H.L.A., (1968) *Punishment and Responsibility: Essays in the philosophy of Law*, Clarendon. Oxford



Hay, G., (2004) 'Biography of John Howard', Paper for the John Howard Society of Canada. <http://www.johnhoward.ca/start.htm>

Heenan, E. (2003) Media Release, *Law Society*. 13 January 2003

Hirschel, J., Hutchis, I., Dean, C., & Mills, A., (1992). *Review Essay on the Law Enforcement Response to Spouse Abuse: Past, Present & Future*. *Justice Quarterly* 9(2): 247-83.

Heritage, J., (1984) *Garfinkel and Ethnomethodology*, Polity Press, Cambridge, UK.

Hibbert, C. (2003) *The Roots of Evil: A Social History of Crime and Punishment*. Sutton Publishers, Chichester.

Hogg, R., and Brown, D., (1998) *Rethinking Law and Order*. Pluto Press, Sydney.

Hope, T., and Shaw, M., (1988) *Communities and Crime Reduction*, Home Office Research and Planning Unit, Her Majesty's Stationery Office.

Hostettler, J. (1995) *The Politics of Punishment*. Barry Rose Law Publishers, Chichester

Human Rights Watch Report (2005) *No Escape: Male Rape In United States' Prisons* [http://www.hrw.org/reports/2001/prison/report2.html#\\_1\\_12](http://www.hrw.org/reports/2001/prison/report2.html#_1_12))

Indermaur, D. (1996) Perceptions of Violence. In *Psychiatry, Psychology and Law*, Vol 3, No 2, November 1996

John Howard Society of Alberta, (1985) *Providing community criminal justice services to Albertans*. St. John's, Newfoundland

John Howard Society of Alberta, (1990) Report to the Alberta Solicitor General regarding the fine options program, St. John's, Newfoundland

Johnson, A., (1995) 'Prison Culture, Violence and Sexuality' in *Cultures of Crime and Violence: The Australian Experience*, La Trobe University Press, Victoria.

Jones, S., (2000) *Understanding Violent Crime*, Open University press, Buckingham, UK.

Katz, J., (1988) *Seductions of Crime*, Basic Books, Harper Collins Publishers.

Kilroy, D. (2004) Sisters Inside Report on Poverty. Queensland Govt. (unpublished)

Kirby, S., and McKenna, K., (1989) *Experience, Research, Social Change*, Garamond Press, Toronto.

- Krohn, M. and Stratton, J., (1980) 'A sense of injustice', in *Criminology*, 17, 495-504
- LaFave, W. (1965). *Arrest: The Decision to Take a Suspect into Custody*. Little Brown. Boston:
- Lansky, M.R., (1988) *Shame and the problem of suicide*, Symposium Paper presented at Los Angeles Suicide Prevention /Family Service for Los Angeles.
- La Vigne, N; Wolf, S.; Jannetta, J. (2004) *Voices of Experience: Focus Group Findings on Prisoner Reentry in the State of Rhode Island*. Justice Policy Center. URBAN INSTITUTE [http://www.urban.org/UploadedPDF/411173\\_Prisoner\\_Reentry\\_RI.pdf](http://www.urban.org/UploadedPDF/411173_Prisoner_Reentry_RI.pdf)
- Liebling, A., Price, D., and Elliott, C., (1999) 'Appreciative inquiry and relationships in prison', in *Punishment and Society*, The International Journal of Penology, Vol 1, No 1, 1999.
- Lewis, M., (1992) *Shame: The Exposed Self*, The Free Press, New York.
- Lowman, J., and MacLean, B., (1992) *Realist Criminology, Crime Control and Policing in the 1990s*, University of Toronto Press.
- Luckmann, T., (Ed) (1978) *Phenomenology and Sociology*, Penguin Books Ltd, England.
- Mace, A., (2000) *The Restorative Prison Project*, 'Restorative principles in the prison setting: A vision for the future', International Centre for Prison Studies, King's College, London.
- MacConnochie, K., Hollingsworth, D., Pettman, J. (1988) *Race and Racism in Australia*, Social Science Press. Melbourne.
- Mahoney, D.L., (2005) *Inquiry into the Management of Offenders in Custody*. Western Australian Govt Press, and online at <http://www.justiceinquiry.dpc.wa.gov.au>
- Maxwell, G., and Morris, A., (1993) *Family, Victims and Culture: Youth Justice in New Zealand*, Social Policy Agency, Institute of Criminology, Victoria University of Wellington, New Zealand.
- Maxwell, G., and Morris, A., (1999) 'Researching Reoffending', Unpublished Conference Paper, ANU February 1999.
- Maxwell, G., and Morris, A., (2001) 'Putting Restorative Justice into Practice for Adult Offenders', in *The Howard Journal of Criminal Justice*, Vol 40, No 1, February 2001.
- McCleary, R., (1978) *Dangerous Men*, Sage Publications, London.

McGivern, J., (1988) *Report of the Inquiry into the Fire and Riot at Fremantle Prison on the 4<sup>th</sup> January 1988*, Government of Western Australia Press.

MacKinnon, C., (1987) 'Feminism, Marxism, Method and the State' in Harding, S., (Ed), *Feminism and Methodology: Social Science Issues*, Indiana University Press.

Maruna, S. (2001) *Making Good: How ex-convicts Reform and Rebuild their Lives*. American Psychological Association. Washington, DC.

Maruna, S. and Immarigeon, R. (2004) *After Crime and Punishment: Pathways to Offender Reintegration*. Willan. Devon UK.

Megahey, N., (2000) *A Community Apart: A History of Fremantle Prison, 1898 – 1991*, Ph.D. Thesis, Murdoch University.

Miller, S.B., (1996) *Shame In Context*, The Analytic Press. NY.

Nagin, D. (1998) Deterrence and Incapacitation, in Tonry (Ed) (1998) *The Handbook of Crime and Punishment*, Oxford University Press, Oxford.

Nathanson, D.L., (1987a) *The many faces of shame*, Guildford Press New York

Nevill, M., (2000) *Report of the Standing Committee on Estimates and Financial Operations in Relation to the Financial management of Prisons*, Western Australian Legislative Council.

Newell, T., (2001) 'Responding to the Crisis – Belgium establishes restorative prisons', Unpublished paper in response to author's visit to the Belgian Prison Service, March 2001.

Newell, T., (2001) 'Restorative Justice in Prisons', Unpublished paper, Restorative Justice Consortium Conference, London, October 2001.

Nieuhaus, J., (2000) unpublished conference paper, SACRO Annual Conference, Heriot Watt University, Edinburgh, December 2000.

O'Brien, P., (2001:119) *Making it in the "Free World": Women and Transition from Prison*. SUNY Press, NY.

Office of the Inspector of Custodial Services, (2001) *Report of an Unannounced Inspection of the Induction and Orientation Unit and the Special Handling Unit at Casuarina Prison*, Western Australia.

Office of the Inspector of Custodial Services, (2002) *Report of an Announced Inspection of Adult Prisoner Transport Services*. Western Australia.

Office of the Inspector of Custodial Services, (2004) *Cognitive Skills Training in the Western Australian Prison System*.

Office of the Inspector of Custodial Services (2003) *Report of an Announced Inspection of Non-Metropolitan Court Custody Centres*.

O'Malley, P., and Sutton, A., (Eds) (1997) *Crime Prevention in Australia*, The Federation press, Sydney.

Ombudsman, Western Australia., (2000) *Report on an Inquiry into Deaths in Prisons in Western Australia*, December 2000, Parliamentary Commissioner for Administrative Investigations.

Orsagh, T. and Chen, J.R. (1988). *The Effect of Time Served on Recidivism: An Interdisciplinary Theory*. Journal of Quantitative Criminology. 4(2): pp. 155-171.

Palys T, and Lowman J. (2000) *Ethical and Legal Strategies for Protecting Confidential Research Information* at [www.sfu.ca/palys/Stragies.pdf](http://www.sfu.ca/palys/Stragies.pdf).

Palys T, Lowman J (2003) Subject to the Law: Civil Disobedience, Research Ethics, and the Law of Privilege. In *Sociological Methodology Vol. 33 Issue 1 Page 381 January 2003*

Pollard, C. (2001) If your only tool is a hammer, all your problems will be nails. In Strang, H., and Braithwaite, J. (Eds) 2001 *Restorative Justice and Civil Society*. Cambridge University Press, Cambridge.

Pratt, J. (1993) 'This is Not a Prison: Foucault, the Panopticon and Pentonville', in *Social and Legal Studies*, 2, pp 373-395

Pratt, J. (1997) *Governing the Dangerous*, The Federation Press, Sydney.

Pratt, J., (1999) 'Emotive and Ostentatious Punishment: It's decline and Resurgence in Modern Society', Unpublished Conference Paper, UWA September 1999.

Pratt, J., (2002) *Punishment and Civilisation: Penal Tolerance and Intolerance in Modern Society*, SAGE Publications, London

Psathas, G., (Ed), (1973) *Phenomenological Sociology*, John Wiley and Sons Inc, USA.

Ramsbotham, A., (1999) *Suicide is Everyone's Concern*, a Thematic Review for Her Majesty's Inspector of Prisons, HMP Press, London.

Reynolds, H., (1999) *Why Weren't We Told*, Penguin Books, Australia Ltd.

Ritzer, G., (1988) *Contemporary Sociological Theory*, McGraw-Hill, Inc., New York.

- Rogers, R., (1993) 'Solitary Confinement', in *International Journal of Offender Therapy and Comparative Criminology*, 37(4) 1993.
- Rose, N., and Miller, P., (1992) 'Political Power beyond the State: Problematics of Government', in *British Journal of Sociology*, 43, 2, pp173-205.
- Rutherford, J., (1990) *Identity, Community, Culture, Difference*, Lawrence And Wishart Ltd, London.
- Salomone, J., (2003) *Issues Paper 8 Strip search, Drugs and related matters*. Department of Justice. Western Australia
- Samuel, B., (2001) *Elizabeth Gurney Fry (1780-1845) Quaker Prison Reformer*, <http://www.quakerinfo.com/fry.shtml>
- Scaer, R.C., (2001) *The Body Bears the Burden. Trauma, Dissociation, and Disease*, Haworth Medical Press. New York
- Scheff, T., (1988) 'Shame and conformity: The deference-emotion system', *American Sociological Review*, 53, 395-406.
- Scheff, T. (1990) *Microsociology. Discourse, Emotion and Social Structure*, University of Chicago Press.
- Scott, M., and Lyman, S., (1968) 'Accounts', *American Sociological Review*, 33, 46-62.
- Scruton, P (2002a) 'Defining 'power' and challenging 'knowledge': critical knowledge as resistance in the UK' in K Carrington and R Hogg (Eds) *Critical Criminology: Issues, debates, challenges* Willan Publishing, Cullompton.
- Scruton, P. (2004) Speaking Truth to Power: Experiencing Critical Research. In Smyth, M., and Wilkingson, E., (eds) *Researchers and their "Subjects": Ethics, power, knowledge and consent*. The Policy Press pp175-194. Bristol.
- Scruton, P., and Moore L., (2004) *The Hurt Inside - The imprisonment of women and girls in Northern Ireland*, Northern Ireland Human Rights Commission, Belfast.
- Sercombe, H., (1995) The Face of the criminal is Aboriginal. In Bessant, J., Carrington, C., and Cook, S., (Eds) *Culture of Crime and Violence: the Australian experience*. A Special edition, Journal of Australian Studies
- Shapland, J., (1981) *Between Conviction and Sentence: The process of mitigation* Routledge. London
- Sherman, L., and Berk. R., (1984). *The Specific Deterrent Effect of Arrest for Domestic Assault*. *American Sociological Review* 49(2): 261-72.

- Shoham, S., (1995) *Violence: An Integrated Multivariate Study of Human Aggression*, Dartmouth Publishing Company, Aldershot, England.
- Sinclair, N., (1993) *Horrific Traumata. A Pastoral Response to the Post-Traumatic Stress Disorder*, Haworth Press Inc, New York.
- Smith, D., (1987) *The Everyday World As Problematic: A feminist sociology*, Northeastern University Press, Boston.
- Smith, L., et al, (1999) *Report of the Inquiry into the Incident at Casuarina Prison on 25<sup>th</sup> December 1998*.
- Stern, V., (1998) *A Sin Against the Future*, Penguin Group, London.
- Stern, V., (Ed), (1999) *Sentenced to Die*, International Centre for Prison Studies, King's College, London.
- Stern, V., (2001) 'Prisons, Drugs and Society', unpublished speech, European Conference on 'Prisons, Drugs and Society', Bern, Switzerland, 20-22 September 2001.
- Strang, H., and Braithwaite, J. (2000) *Restorative Justice: Philosophy to Practice*, Dartmouth Publishing Company Limited, Aldershot, England.
- Strang, H., and Braithwaite, J. (Eds) 2001 *Restorative Justice and Civil Society*. Cambridge University Press, Cambridge.
- Sykes, G., and Matza, D., (1957) 'Techniques of neutralisation: A theory of delinquency', *American Sociological Review*, 22, 664-670.
- Sweeney, C., (1981) *Transported in place of death, convicts in Australia*, MacMillan. London.
- Taylor, C., (1990) 'The Self in Moral Space', in *Sources of the Self: The Making of the Modern Identity*, Cambridge, Mass.
- Taylor, I., Walton, P., and Young, J., (1973) *The New Criminology*, Routledge, London.
- The Aboriginal Justice Council (1998) *Our Mob, Our Justice: Keeping the Vision Alive*, Aboriginal Justice Council Secretariat, Perth, Western Australia.
- The Association of Heads of Churches of Western Australia (2000) *Prison the Last Option: New Directions for the Millenium*, UWA Conference Report, 18-19 March, 2000.

- Thomas, J., and Stewart, A., (1978) *Imprisonment in Western Australia*, University of Western Australia Press.
- Tomasic, R., and Dobinson, I., (1979) *The Failure of Imprisonment*, Allen and Unwin Australia Pty Ltd, Sydney.
- Tonry, M. (1998), *Intermediate Sanctions* in Tonry (Ed) (1998) *The Handbook of Crime and Punishment*, Oxford University Press, Oxford
- Tyler, Tom R., (1990) *Why People Obey the Law*, Yale University Press. New Haven.
- Tyler, T., and Smith, H., (1999) 'Justice, Social Identity, and Group Process', in Tyler, T. et al (Eds) *The Psychology of the Social Self*, Lawrence Erlbaum Ass, New Jersey.
- van Drenth, A., and de Haan, F.. (1999) *The Rise of Caring Power : Elizabeth Fry and Josephine Butler in Britain and the Netherlands*, Amsterdam University Press.
- van Wormer, K., (2001) *Counselling female offenders and victims*, Springer. NY.
- Vinson, T., (1982) *Wilful Obstruction*, Methuen Australia Pty Ltd, Sydney.
- Von Hirsch, A. (1998) in Tonry (Ed) (1998) *The Handbook of Crime and Punishment*, Oxford University Press, Oxford
- Walker, N., 1980 *Punishment, Danger and Stigma*, Barnes and Noble Books, New Jersey.
- Walsh, T., (2004) *Incorrections: Investigating prison release practice and policy in Queensland and its impact on community safety*. Faculty of Law, Queensland University of Technology.
- Walsh, T., (2005) *Incorrections 11: Correcting Government*. TC Beirne School of Law, University of Queensland.
- Walters, G.D., (2003) *Changes in Criminal Thinking and Identity in Novice and Experienced Inmates: Prisonisation Revisited*. Criminal Justice Behaviour 2003 v4 pp399-421
- Weber, Max (1962) *Basic Concepts in Sociology by Max Weber*, Translated & with an introduction by H.P. Secher, The Citadel Press, New York.
- Weeks, J., (1990) 'The Value of Difference' in Rutherford, J., (Ed) *Identity, Community, Culture, Difference*, Lawrence and Wishart Ltd, London.
- Western Australian Police Union (website) [www.wapolun.com.au](http://www.wapolun.com.au)

Wexler, D. (2004) *Therapeutic Justice: An Overview*. International Network on Therapeutic Jurisprudence. [www.law.arizona.edu/depts/upr-intj/](http://www.law.arizona.edu/depts/upr-intj/)

Wilkinson, R.A., (2003) *Can Rehabilitation Succeed and Reentry be Successful?* Paper to the American Bar Association, Justice Anthony Kennedy Commission, November 12, 2003.

Winick B, (2003) A Therapeutic Jurisprudence Model for Civil Commitment in K Diesfeld and I Freckelton (eds) (2003:26) *Involuntary Detention and Therapeutic Jurisprudence* Ashgate Publishing. NY.

Wortley, R., (1986) 'Neutralising moral constraint', *Australian & New Zealand Journal of Criminology*, 19, 88-104.

Zamble, E., and Quinsey, V., (1997) *The Criminal Recidivism Process*, Cambridge University Press, UK.

Zehr, H., (1990) *Changing Lenses*, Herald Press, Scottdale, Pennsylvania.